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Alcohol : legal issues concerning the environment of licensed premises in Alberta

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ALCOHOL: LEGAL ISSUES CONCERNING THE ENVIRONMENT OF LICENSED PREMISES IN ALBERTA

A Thesis

Presented To

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In Partial Fulfillment

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by

Nicholas Anthony Jones

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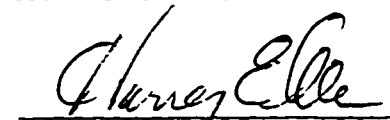

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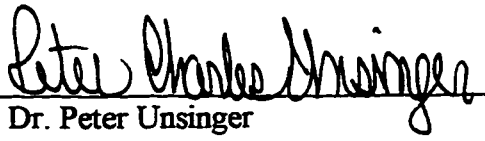

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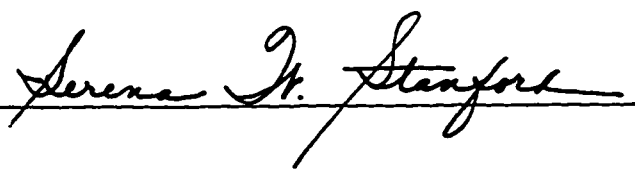

ABSTRACT

ALCOHOL: LEGAL ISSUES AND THE ENVIRONMENT OF LICENSED PREMISES IN ALBERTA

by Nicholas A. Jones

This thesis investigates the legal issues surrounding licensed premises in Alberta, Canada. First, the historical and present day liquor legislation and its enforcement are discussed briefly. The legislated duty of care imposed upon alcohol providers is defined and discussed in reference to civil cases heard before Canadian Courts. Finally, the legitimate use of force by bar staff in controlling disruptive behavior to maintain a safe and orderly premises is investigated.

The research shows that while operating a licensed premise many legal issues need to be addressed. Bar owners and staff are faced with a dilemma: to succeed in business they must sell alcohol, but to avoid civil litigation, they must use restraint in their selling. Finally, the use of force by bar staff may be justifiable through invoking defenses available in the criminal code. Criminal liability resulting in charges may result if the force used is deemed excessive.

This thesis is dedicated to my parents

Tony and Anne Jones

Thank - you for all your support

with special thanks to:
Lou Holscher
Augustine Brannigan
Kelly McAuliffe
Kelly Hutton
Sgt. L. Berti
and
all the bar owners, managers, and staff...
who have helped me in writing
this thesis

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Introduction

The purpose of this thesis is to investigate and discuss the legal issues that surround the selling of alcohol in licensed establishments in Alberta, Canada. Discussion and debate regarding the societal concerns pertaining to alcohol were present in the Canadian Territory before Alberta was officially recognized as a Canadian Province in 1905. Eight years of experimenting with prohibition ended in 1924 with the Alberta Government assuming control over liquor.

The 1924 Government Liquor Control Act of Alberta created the Alberta Liquor Control Board. The Board's function was to oversee the sale and control of alcohol in Alberta. The Alberta Liquor Control Board, in controlling the sale of alcohol, also oversaw the granting and canceling of liquor permits and licenses to people desiring to operate a premises which sold alcohol. It also appointed inspectors whose duties were to ensure that the licensees complied with the legislated rules and regulations contained in the Government Liquor Control Act. Additionally the Government Liquor Control Act gave the Alberta Liquor Control Board the power to enforce the law, assessing the licensee who violated the law the allowed, legislated penalties.

The latest legislative successor of the 1924 Government Liquor Control Act of Alberta is the 1996 Gaming and Liquor Act, and Gaming and Liquor Regulations. These latest laws will be discussed in the context of licensed premises. The role of the inspector will be investigated as well as the obligations and expectations bestowed on the licensee and their employees. A few of the most serious offenses will be discussed and the entire

process of an inspection from the entrance of the inspector, through the hearing and dispensing of sanctions, will be presented in regard to a less serious and often inspected violation. Following this, a brief discussion of a few present day concerns that Albertans have regarding alcohol will be explored.

Drinking-and-driving was noted by Solomon and Van de Kleut (1987) as being one of the factors that was responsible for the emergence of civil litigation against licensees and their staff. In addition to a common law duty of care developed by case law, the Gaming and Liquor Act and the Occupiers' Liability Act bestow a legal duty of care on alcohol providers. These two pieces of legislation outline the requirements and responsibilities that are expected of a licensed premises.

A licensed premises enters into a invitor - invitee relationship with their patrons. This relationship bestows upon a licensee and their employees a duty of care for the customers. As occupiers, the bar owes a duty of care to the customers to provide a safe environment on the licensed premises. They are expected to take care to avoid any reasonably foreseeable situations or obstacles which could bring harm to anyone using the premises. As alcohol providers the licensee and their staff owe a duty of care to the patrons consuming alcohol that no harm befalls them as a result of their consumption. Additionally, the duty of care as alcohol providers is extended to anyone that may be harmed as a result of the actions of an intoxicated individual that was served at the premises. Cases heard before the Canadian Courts will be presented to demonstrate the potential liability facing anyone who works in the bar business.

The final legal issue which will be investigated is the use of force by bar staff. Situations may arise while operating a licensed premises where the use of force may become necessary to provide a safe and orderly environment in the bar. In an effort to protect the property and the people using the property, force may become a necessity. In performing the requirements of their employment, the staff are empowered as agents of the owner to use force within the allowable limits of the Canadian Criminal Code.

Two defenses used in Canadian Courts, which provide legal justification for the use of force, will be discussed. Case law demonstrates legal defenses raised by bar staff after being criminally charged for the force they applied to someone in controlling a disorderly patron. A significant aspect in attempting to raise the legal defenses is that the force used was no more than was reasonably necessary under the prevailing circumstances. The final legal issue considered is the use of excessive force by an employee of a licensed premises, and the resulting criminal charges being laid due to the excessive nature of the force that was used.

There is not a vast amount of literature devoted to the subject of licensed premises and the legal issues that surround those who act as alcohol providers. This investigation has relied on the knowledge acquired as a result of the experiences of the author being employed at a number of licensed premises for the past six years. It additionally incorporates discussions with members of the bar industry throughout the time of this investigation. Finally, it looks at the law and the legal issues in both civil and criminal cases that involve licensees and/or their employees. These cases and the dissertations by

the judges provide legal insight into the issues surrounding the licensed industry and their business of providing alcohol to their customers.

I. A Short History of Liquor, Prohibition, and Provincial Control in Alberta

Early Settlement in the Northwest Territories

Discussion and debate regarding the societal concerns and issues pertaining to alcohol has a history that extends back to the early settlers; pre-dating Alberta's official status as a province of Canada. The discussion regarding alcohol was initiated in Ottawa as the circumstances which prevailed in the Canadian territory between British Columbia and Manitoba were not conducive to settlement. "If the west was ever to be settled, some security for the settlers and their property had to be provided" (Gray, 1972, p. 21). Discourse involving alcohol maintained a high profile in public forums throughout the settlement, growth, and development of what is now Alberta.

In order to achieve the goal of settling the Northwest Territories, which included what is now Alberta and Saskatchewan, the factors not conducive to achieving that goal had to be removed.

> American traders had brazenly moved into Canadian territory with their whisky forts. American wolfers had hunted down and murdered Canadian Indians. Here and there isolated homesteaders were terrorized by wandering bands of Indians (Gray, 1972, p. 21).

The response to this situation by Ottawa had two parts. First, was the creation and development of the North West Mounted Police (N.W.M.P.). The other action taken, an order-in-council was legislated in 1873 by Lieutenant Governor Adam Archibald which declared Prohibition throughout the Northwest Territories. "It gave anybody who found anybody anywhere in the Territories with whisky in his possession the power to confiscate and destroy the booze and to arrest the owner" (Gray, 1972, p. 23).

In 1873, Prime Minister John A. Macdonald created the N.W.M.P. "The primary task of the new force was to effectively occupy the West for Canada until the growth of population established Canadian ownership beyond any doubt" (Macleod, 1976, p. 103). The creation and deployment of the N.W.M.P. to the Northwest Territories was an effort by Ottawa to exert its control over the process of development it wished to achieve in the region. According to Macleod, the Canadian government had learned from the experience of the United States that, "[a] wild west would certainly have bankrupted the government in short order" (1976, p. 102).

In regards to the removal of the American whiskey traders and maintaining peaceful order over the Indians, there is evidence that the Mounties performed their duties in an exemplary manner (Gray, 1972, p. 23). The N.W.M.P., unfamiliar to the territory, were led to the notorious whiskey post Fort Whoop-Up by Jerry Potts; a man of Blood Indian and Scottish descent (Marsh, 1985, p. 1461). News of the arrival of the N.W.M.P. reached the American traders. The imminent threat that accompanied the advancing N.W.M.P. was enough to scare the traders off Canadian soil "without a shot being fired" (Gray, 1972, p. 23). From the perspective of the Canadian government in Ottawa, the Mounties were also successful in their duties regarding the Indians. "Firmness, fair dealing and compassion for the plight of the Indians were their basic tactics, supplemented where necessary by bluff and histrionics" (Macleod, 1976, p. 103). Over time the methods used by the N.W.M.P., in an effort to keep the Indians living passively on their reserves, evolved from persuasion to coercion (Macleod, 1976, p. 104). Regardless of the method used, the Mounties had achieved Ottawa's goal of pacifying the Indians which therefore

greatly enhanced the likelihood of settling the West. In regards to Prohibition, however, the task of enforcing the no-alcohol-legislation proved ineffective and resulted in it being replaced by the Northwest Territories Act of 1875. This new legislation allowed for individuals to import liquor for their own consumption; provided they had been granted a permit from the Lieutenant-Governor (Gray, 1972,
p. 24).

Conflict Between the Mounties and the Northwest Territories Act

Methods of circumventing this latest legislation were quickly discovered and it became the main priority of the N.W.M.P. to prevent this from occurring. Once again, the efforts of the Mounties proved to be futile. This initiated contemptuous feelings towards the Mounties which became further exacerbated by the creation of a method of *moieties*; payment of half the amount of the fine to any person (i.e. Mountie) who informed on a liquor offender. The public viewed this as a get-rich-quick scheme for the Mounties. "The combination of moiety payments and the prosecutor/judge/jailer role of the Mounties led to the first public protest meeting in the Territories at Calgary in December of 1884" (Gray, 1972, p. 26). This meeting resulted in a list of demands being sent to the Northwest Territories Council outlining their grievances and demanding change. Their efforts however would have to be viewed as unsuccessful.

> The Territorial Council yielded on the second demand and appointed a stipendary magistrate, who turned out to be a near-despot who jailed the local editor and a member of the town council and appointed a second mayor and a second town council to office (Gray, 1972, p. 27).

The other demands presented were rejected by the government. The change that resulted was negligible at most.

Change did eventually occur, in the form of new legislation, regarding liquor. The two advocates for the change approached the issue from another viewpoint.

> In general, expressed concern over the liquor problem came from the newspapers and the N.W.M.P., and in both cases the concern was related to the difficulty of enforcing the law rather than with boozing per se (Gray, 1972, p. 31).

The Mounties' frustrations with having the job of enforcing an unenforceable law led them to a state of discontent (Gray, 1972, p. 34). This was demonstrated in their efforts to enforce the liquor law. The combination of a Prohibition Act full of loopholes, a non - existent temperance movement and a less than enthusiastic effort on the part of the police led to the repeal in 1891 of section seventy-four of the Northwest Territories Act; and left the responsibility for the problem of liquor up to the Northwest Territories Council (Gray, 1972, p. 35).

Conditions Under Northwest Territories Council Control

In 1892, within a year of being in charge of liquor activities in the Northwest Territories, the Northwest Territories Council enacted regulations permitting the opening of saloons, under the supervision of the newly created Territorial Liquor Inspectors. It was the inspectors' duty to enforce the regulations which permitted the operation of a saloon. There is evidence that the results of this new system was taking a bad situation and making it worse (Gray, 1972, p. 35). The liquor inspectors were understaffed, the

N.W.M.P. continued to turn a blind eye, and the local police, if the town actually had their own police force which many did not, were busy with other town matters. It did not take very long under these circumstances for the general public to become angered by the goings-on around them.

The negative public sentiment was further fueled by the attitude of the Anglo-Saxon Protestant churches which considered drinking a reprehensible sin. The views of the Protestant clergy were supported and expressed in the newspapers. Thus, "[as] the clergy moved gradually from a Temperance to a Prohibition stance, so did the newspapers" (Gray, 1972, p. 40). The Women's Christian Temperance Union (W.C.T.V.) had, until this change of legislation in 1892, been fairly quiet in the Northwest Territories (Sheehan, 1981, p. 18). This new legislation appears to have been a key ingredient in bringing them to the foreground in the movement for Prohibition, as well as other arenas.

> The W.C.T.V. became involved in areas that were not prohibitionist in the strict sense, for example in lobbying for the Direct Legislation Act, which allowed the people to decide an issue by referendum, and the Suffrage Movement, which would extend the franchise to women (Sheehan, 1981, p. 19).

Hence, W.C.T.V. had added another voice to the chorus that sounded out in favor of Prohibition legislation. Gusfield (1963) argues that these grassroots organizations felt a need to maintain their social status and impose their traditional values on the increasing urban population, the majority of whom were immigrants.

> They tried to obtain these ends by getting others who were viewed as individual sinners or 'backsliders', as well as alien groups like the urban Irish Catholics, or the beer-loving Germans, to accept the values of the temperate and the abstainers (Brannigan, 1984, p. 9).

The Prohibition movement was growing throughout all of Canada. Crimes of all kinds, especially prostitution, lack of economic productivity, and wife-beating were all considered to be the result of the consumption of alcohol. "In the uproar over enforcement of the liquor laws, special emphases was always placed on the illegal activities of 'foreigners'" (Gray, 1972, p. 45). Immigrants were continually used as scapegoats for the problems of society (see for example: Gray, 1972, Avery, 1975, Macleod, 1976, and Sheehan, 1981). As Macleod (1976) notes, a lot of the immigrants who came to Alberta arrived from the United States. The previous interactions with the American whisky traders had left an impression of the lawless nature of the Americans (Macleod, 1976, p. 108). Further, as outlined by Avery (1975), many of Eastern European immigrants resided in the cities and worked in industry; rather than the agricultural homesteads which Ottawa had envisioned as their destination (p. 54). These young men were a long way from home, and with nothing to occupy their time after work, often ended up in the saloons. This made them visible to the watching eyes of a disapproving public (Sheehan, 1981, p.19).

Pressure from all over the country was put on Ottawa to enact a national Prohibition law. In September 1898 Prime Minister Laurier held a national Plebiscite. Prohibition was voted in favor of, but rejected by Laurier based on his own calculations regarding the low percentage of the electorate that supported it. The Prohibitionists had to start all over again.

Emerging Strength of the Temperance Movement

The Temperance Movement gained a lot of momentum in the early 1900's for three reasons:

> 1. The mass influx of new immigrants caused the population of the cities and towns to explode upward.
> 2. The adoption of the *Banish-the-Bar* slogan.
> 3. The adoption by Saskatchewan and Alberta of direct legislation acts under which, if a certain percentage of the electors petitioned for any legislation, the government was required to hold a plebiscite on the question and, if the electors voted in favor, to enact the legislation (Gray, 1972, p. 70).

In Alberta, the Temperance and Moral Reform Society was created by Rev. W.G.W. Fortune in 1907, who traveled Alberta with abstinence pledge cards. His efforts were noticed and gained the support of the United Farmers of Alberta (U.F.A.). The Temperance and Moral Reform Society, the U.F.A., and the W. C. T. U. joined forces in the fight for Prohibition. The existing direct legislation in Alberta, provided the legislative opportunity to support their cause. "The Alberta campaign was the culmination of one of the shortest and sharpest Prohibitionist efforts in Canada" (Gray, 1972, p. 82). The necessary support needed to call for a plebiscite was achieved. Albertans went to the polls in July of 1915. "A plurality of 58,295 votes in favour of Prohibition resulted in 'dry' legislation effective July 1, 1916" (Sheehan, 1981, p. 24).

Prohibition Era in Alberta

The Introduction of Prohibition had an almost immediately visible positive effect in Alberta. The arrests for drunkenness plummeted to an incredibly low level (from 7283 cases in 1913 to 391 in 1917), additionally, all crime mirrored the trend of drunkenness

(19426 cases in 1913 to 6627 in 1917). "In his annual report for 1917, Chief of Police Alfred Cuddy of Calgary emphasized the Prohibition had acted as a preventive for every type of crime" (Gray, 1972, p. 92). It should be noted, however, that while these crime statistics appear to be very supportive, they may be a result of other possible factors being reflected. Brannigan (1987, p. 125) notes that crime statistics may be the result of a change in demographics; such as those he observed occurring in conjunction with the Second World War. Similar effects may be in existence in the times noted by James Gray. There is no question that, during the Prohibition era, crime did decrease. Nevertheless, the effect that can be solely attributed to Prohibition cannot be decisively reported. Regardless of the full effect that Prohibition had, Gray (1972) states that business reported great increases in sales, savings accounts rose significantly and people reported better family lives (pp. 90 - 96). The influence that Prohibition had on Albertan society was considered to be of a positive nature.

One problem facing the Prohibitionists, however, was their naive belief that by removing alcohol they would also be eliminating the desire for it. In fact, this did occur for a great majority of Albertans. The Prohibitionists were not prepared however, for the liquor-craving minority.

> It was this thirsty one-fifth or so of the drinking force, which was prepared to go to endless trouble to search out sources of gratification, that, indirectly eventually brought the prohibitory structure crashing down in ruins (Gray, 1972, p. 98).

As was the case in the past, loopholes in the legislation or circumventing it, were discovered and exploited. Alcohol's believed medicinal value allowed doctor's the power

to prescribe alcohol to their patients who would then obtain it from the drugstore (Gray, 1972, p. 98). The minority of doctors and druggists who were not in favor of Prohibition were more than happy to use their position to satisfy a patient's *medical need.*

Another problem for Prohibitionists was that the breweries in Alberta operated under a federal license, and the provinces were helpless in closing them. The legislation enacted allowed for the sale of Temperance Beer, beer with a significantly and sufficiently low percentage of alcohol. Under a federal license the breweries could export their product interprovincially. While shipping Temperance Beer to the saloons which were selling it, it was not uncommon for regular strength beer to be substituted in a few of the barrels (Gray, 1972, p. 100). While there was indeed some illegal strong beer being sold in saloons, the illegality of it had ruined the atmosphere of the saloon. The ones drinking the Temperance Beer were not getting anything out of it except a bloated stomach. The men drinking the strong beer could not let on. "The boisterous treating [the practice of reciprocating any drink bought for oneself] and singing and horseplay was replaced by a funeral silence. Getting drunk was not fun any more" (Gray, 1972, p. 100, brackets, at p. 13).

Other factors which made the enforcement of liquor laws nearly impossible included: cities in a state of economic distress, an unenthusiastic police force, difficulty in obtaining convictions, provincial grievances with Ottawa and *moonshine* bootlegging (Gray, 1972). With the collapse of the real estate market, cities found themselves with a serious shortage of funds as the real estate taxes that were to be collected became nonexistent. As a result they were forced to reduce public services, which included the police, to the

barest minimum. This was then reflected in the effort of liquor enforcement by the police. The shrunken size of the force left them understaffed in the war against liquor. Even when arrests were made by the police it was very difficult to obtain a conviction. Being able to prove that someone had sold whisky required the illegal act of someone else purchasing the whisky. Despite the good intentions of the purchaser, the *liquor spotters* were often not society's most upstanding citizens and their character was often questioned in court. "It was one man's word against another's, and the word of a bootlegger seemed as believable as that of a liquor spotter" (Gray, 1972, p. 103). In order to overcome this obstacle, liquor inspectors were forced to team up so as to have more than one witness. This, however, while aiding in the process of gaining convictions, significantly reduced the numbers of possible arrests as two men were attending to a formerly one-man operation.

Problems between the provincial and federal levels of government did not help to improve the situation. Moonshine and the operation of breweries both came under federal jurisdiction. This left the provincial liquor inspectors with an untouchable problem. The illegal production of alcohol in home stills was not affected by provincial Prohibition. The provincial and city police could only become involved in the moonshine industry when it was discovered in the retail market. The required procedures for handling a discovered illicit still were very cumbersome.

> They would notify their supervisors, who would notify the Attorney General, who would notify the Federal Customs and Excise Department, who would authorize the obtaining of a search warrant and the staging of a raid by the R.C.M.P. (Gray, 1972, p. 104).

In an attempt to reduce the cumbersome and time-consuming procedures, the Alberta government requested that their liquor inspectors be given the status of special constables of the Federal Excise Department. With this status the inspectors could act immediately with the required authority, preventing the opportunity to get rid of the evidence that was available under the present system of procedures. The Alberta government's request was denied by the Customs and Excise Department.

A further cause of strain between the provincial and federal governments was the lack of action taken by the federal government against the breweries. Breweries, under federal jurisdiction, were subject to closure after amassing three convictions for production, storage, or sale of strong beer. "Manitoba had one brewery with thirteen violations still running at top capacity while Ottawa turned its back" (Gray,1972, p. 102). With a lack of cooperation from the federal government, the attempts to control the liquor trade from the breweries was next to impossible.

Regardless of the many positive outcomes that had been achieved under Prohibition, those involved in the Prohibition movement were not satisfied. The aforementioned problem areas, as well as the tremendous strength of the movement in the United States, once more had a resounding *call to arms* of those in favor of provincial wide total abstinence. Their vocal persistence aimed at Ottawa finally paid off. On March 11, 1918 the federal government strengthened the position of the provincial Prohibition laws with an Order-in-Council (Gray, 1972, p. 105). It decreed that the production, transportation and sale of alcohol anywhere in Canada was illegal. The duration of the Order-in-Council was set at one year after the end of the war.

The effectiveness of the 1918 Order-in-Council was to end in November of 1919. With the end in sight the provincial governments and Prohibition supporters rallied the federal government to follow the lead of the United States and make Prohibition a federal concern with federal enforcement. The resulting legislation, the Canada Temperance Act of 1919, appeared to be the legislation desired by the Temperance Movements in Western Canada. "It did, however, make it illegal to ship beverage alcohol into any province that voted to forbid the importation or sale of liquor" (Gray, 1972, p. 107). The initial joy of success felt by the Prohibition supporters in the provinces that already had Prohibition laws, however, was short lived. Under the new legislation it was required that each province hold a referendum on the question before the regulations in the Canada Temperance Act would be put into effect. Further, Ottawa called for the provincial referendums to be held almost a full year later, on October 25, 1920.

Alberta Provincial Referendum

The results of this decision from Ottawa, requiring each province to hold a referendum, severely damaged the Prohibition efforts. "The effect of that decision was to open the floodgates for booze to flow from all directions" (Gray, 1972, p. 107). The inter-provincial mail-order alcohol businesses were quickly resurrected and began production, transportation and sale of alcohol. Of even greater financial interests to the liquor agents nonetheless, was the gold-mine, south of the border. The dry Sahara of the United States was an alcohol-producers' dream come true. The time between the federal

ban becoming ineffective and the plebiscite being held enabled alcohol to find its way back into society in Alberta.

The campaign leading up to the 1920 referendum was quite uneventful and lack-luster. The referendum in British Colombia occurred five days before the voting in Alberta and the rest of the prairies. It was the new multifaceted approach used in their referendum that would plant a seed for the change in Alberta's legislation, that over time grew and resulted in Alberta following the path established in British Colombia.

The immediate issue at the time, however, was the 1920 Alberta plebiscite. The ballot was a *yes* or *no* vote. Despite a low turnout at the polls and majority vote for Prohibition that was far from definitive, it was nonetheless a victory for the Prohibitionists (Gray, 1972, p. 195). Once again, to the dismay of the Prohibitionists, this was not the end of the battle. The referendum in British Columbia had augmented a new approach to the Prohibition issue. "Almost on the morrow of the plebiscite, full-blown organizations sprang up to press for the adoption of the British Colombia system on the prairies" (Gray, 1972, p. 172). The main arguments presented by the Moderation League, in favor of a system of government control of alcohol, included the ineffectiveness of enforcing the prohibition law and the vast sums of money that were being made in the illegal bootlegging trade. In addition, the Moderationists were not in favor of a return to the establishment of bars. "The Moderationists were as aggressively anti-saloon as the driest of Prohibitionists" (Gray, 1972, p. 194). Liquor was made available to the public under their proposed system, but not with the same profit-seeking enthusiasm as would be present with private enterprise. This compromise situation

would be overseen by the newly established Liquor Control Board, which was required to report to the Attorney General.

The Government Liquor Act, commonly called the Moderation Act, provided the government with a dilemma. It was a question of revenue versus control. How was it possible for the government to sell liquor and yet encourage moderation? Alex Manson, the Attorney General, then overseeing the Liquor Control Board, spoke on this issue. He emphatically stated that revenue was merely a secondary issue; moderation through control was their primary objective.

> He acknowledged that the government would profit from liquor sales but told the prohibitionists that to sell liquor at cost would be 'immoral', as 'the conditions that would ensue would be far from good' (Campbell, 1993, p. 175).

The goal was to be achieved by finding a price that would curb tendencies to overindulge and yet keep profits at a minimum.

Over a short period of time it was discovered that the profit from alcohol sales was a fairly significant amount of the British Columbia government's income. In the early stages of the Government Liquor Act's implementation, Premier Oliver recognized the potential revenue of alcohol sales as an important source of income for the province. Throughout the next five decades the issue of control versus revenue continued. "The government was forced to admit, perhaps somewhat begrudgingly, that in liquor matters, control was still as important as profit" (Gray, 1972, p. 204). Another factor which helped to bring about the referendum was the depressed economy in Alberta. The former governments' inexperience in running a province as well as their predisposition against

tax increases made them fairly easy prey of the Moderationist Leagues. As was previously the case in British Colombia, the Moderationist arguments of the unenforceability of the present law and the immense potential income that the government could generate from liquor sales were very convincing to the Alberta government.

The ballot presented to Albertans in the 1924 referendum had four options:

(a) For retention of Prohibition.
(b) Sale of beer in hotels.
(c) Sale of beer by vendors.
(d) Government sale of all liquor and sale of beer in licensed hotel premises.

A Moderationist majority voted in favor of proposition (d). Government control of liquor had begun, and with it the end of Prohibition in Alberta. The war between the *Wets* and the *Drys* had been a long and hard war with many battles being won and lost by both sides.

The resulting legislation, an Act to provide for Government Control and Sale of Alcoholic Liquors ("Government Liquor Control Act of Alberta", G.L.C.A.A., for short) was assented to April 12, 1924. The G.L.C.A.A. was divided into six parts:

Part I. Administration of this Act, Creation of Board, and Its Powers and Functions.
Part II. Establishment of Government Stores and the Keeping and Selling of Liquor.
Part III. Formation of Local Option Areas and Proceedings for Taking Plebiscite Therein.
Part IV. Prohibition, Interdiction, Penalties and Procedure in Prosecutions and on Appeal.
Part V. Ownership of Property Acquired by the Board, Financing and Accounting by the Board and Application of Profits.
Part VI. General Provisions.

G.L.C.A.A. Part I s. 4 (see Appendix A) established the creation of the "Alberta Liquor Control Board" (A.L.C.B.). The appointment of the Board members, specifying the number of members that constitute quorum, and fixing the Board members salaries were the responsibility of the Lieutenant Governor in Council (G.L.C.A.A. Part I s. 6) (see Appendix A). G.L.C.A.A. Part I s. 9 (see Appendix A) outlines the duties, functions, and powers of the A.L.C.B. A few of these duties included: s. 9(a) purchase of liquor, s. 9(d) granting and canceling of permits, s. 9(g) appointing of vendors and inspectors and s. 9(j) granting and issuing licenses (see Appendix A). Finally, G.L.C.A.A. Part I s. 10 (see Appendix A) grants the A.L.C.B. the power to enact as well as enforce regulations regarding all aspects of the liquor trade in Alberta.

G.L.C.A.A. Part II s. 19 (see Appendix A) legislated the two classes of permits allowed under the Act: individual permits and special permits. Special permits were issued for druggists, dentists and veterinarians s. 19(c), as well as ministers of the Gospel s. 19(d) (see Appendix A). With regard to the individual permits, there were different permits, with different fees for residents s. 19(a) and non-residents s. 19(b) (see Appendix A). Further, within the sections just mentioned, permits were only available to an individual who was "the full age of twenty-one years". Part II also covered the A.L.C.B. function of granting: club licenses s. 29 through s. 30, canteen licenses s. 31 and beer licenses s. 32 through s. 37 (see Appendix A).

The final selections of the G.L.C.A.A. that will be presented in this brief overview of the Act are from Part IV which covers the prohibitions, interdiction, penalties and

procedure in prosecution and on appeal. Part IV s. 90 (see Appendix A) prohibits the giving or sale of liquor to anyone under twenty-one except by their parents or guardians, physician or dentist and their minister. Part IV s. 88 (see Appendix A) prohibits the consumption of alcohol in a public place, as well as the illegality of being intoxicated in a public place. Finally, Part IV s. 107 (see Appendix A) provides an example of the penalties imposed for violating a section of the Act. For a first offense regarding providing alcohol to an individual under twenty-one years of age, the violation results in "imprisonment, with hard labor, for not less than one month, nor more than three months".

The Prohibition era, which had lasted for eight years, had come to a close and a new era was ushered in, the era of government control of alcohol. Alberta had started down a new road discovering what place alcohol would have in society.

II. Alberta: Present Day

The Gaming and Liquor Act, Regulations and Handbook

As Gray (1972) noted in his final chapter, the end result of the repeal of prohibition in the prairies was government control over liquor. To some degree not all that much has changed since 1924. The Gaming and Liquor Act (G.L.A.) and the Gaming and Liquor Regulation (G.L.R.) are the latest legislative successors outlining governmental authority and control of liquor in Alberta. Further, there is the Licensee Handbook, distributed by the Gaming and Liquor Control Board, which provides guidelines for licensed premises owners, managers and employees. The result of the multiple choice plebiscite brought to Albertans in 1924 was a majority in favor of "Proposition (d): government sale of all liquor, coupled with sale of beer in licensed premises" (Gray, 1972, p. 208). G.L.A. s. 47 states,

> No person may, except in accordance with this Act or in accordance with a liquor license, manufacture, import, purchase, sell, transport, give, possess, store, use or consume liquor.

In summary, the Government of Alberta continues to control the many facets concerning liquor with similar powers given to them in 1924.

Liquor Law Enforcement: Inspectors

The enforcement of laws and regulations outlined in the G.L.A., G.L.R., and Licensee Handbook falls under the authority of the Alberta Gaming and Liquor Commission and their appointed inspectors. The role of inspector includes police officers as stated in the G.L.A. s. 95(2),

> s. 95(2): Every police officer as defined in the *Police Act* is an inspector for the purposes of this Act.

Through the efforts of appointed inspectors and the police a mechanism has been developed for establishing compliance to the G.L.A. and G.L.R.

The G.L.A. and the Licensee Handbook outline both the role of the inspector, as well as the licensee and their employees' obligations to assist the inspectors in performing their task. G.L.A. s. 100 provides inspectors with the authority to enter a licensed premises at any reasonable time in order to perform one of their assigned tasks; to ensure that the licensee is complying with the requirements of the G.L.A.

A second function of the inspectors, as outlined in the Licensee Handbook s. 10.1(see Appendix B); is to confer with the licensee in regards to a variety of issues such as: investigating complaints s. 10.1(4d), conducting training seminars s. 10.1(4e) and discussing any operational concerns that the licensee may have s. 10.1(4f) and s. 10.1(5).

The role of the inspectors as *liquor police*, ensuring that the licensee is complying with the legal standards outlined in the G.L.A. and G.L.R., is the subject on which this chapter will focus. Upon arrival at a licensed premises the inspector has the authority to enter the licensed premises for the purpose of carrying out an inspection. The licensee or their staff cannot refuse entrance to an inspector. They may, however, request to see the proper identification from the inspector and under s. 100(3) of the G.L.A. (see Appendix B) it must be presented. After an inspector has been properly identified, the licensee is required by law to assist the inspector in performing his duties as stated in G.L.A. s. 101,

> s. 101: A licensee, an applicant for a licence and a common carrier and their officers, employees and agents must, on the request of an inspector,
> (a) assist the inspector in carrying out an inspection under section 100, and
> (b) provide the inspector with records and documents and provide a place where they may be examined.

For the purposes of this research, the laws and regulations surrounding licensed establishments with a Class A license are the ones which will be investigated (see Appendix B, Gaming and Liquor Regulation).

In an inspection of a licensed premises a licensee is investigated for compliance with all laws and regulations that are governed by the G.L.A. and G.L.R. A thorough and complete inspection regarding every aspect of the applicable laws is rarely completed at one time, since the various conditions to be met are not within the scope of one specific time frame. For example, it would be impossible for an inspector to check whether or not a licensed establishment was serving or allowing the consumption of liquor outside the permitted times designated for service and consumption (see Appendix B for G.L.A s. 65[1b]) unless they were present at that time. Further, a bar which is allowing consumption *after hours* is likely to take some steps to ensure they do not get caught. Therefore, questions regarding such issues as permitting an intoxicated person to enter the bar or exceeding the determined occupant load are usually inconsequential to liquor inspectors not focusing on these problems. Nevertheless, a liquor inspector is permitted to inspect and report on any and all applicable laws and regulations when visiting a licensed premises. A full examination of all the requirements placed on a licensed establishment by the G.L.A. and the G.L.R. is beyond the scope of this investigation. Nonetheless, three

examples of possible violations will be presented here to provide an overview of the interaction between a liquor inspector, the licensed establishment and the governing board.

Offenses: Illegal Liquor

One of the most serious offenses, as measured by the seriousness of the potential penalty that may be dealt the licensee who is found to violate it, concerns the sale of illegal liquor. G.L.A. s. 47 (see Appendix B) allows for the cancellation of a license and up to a $100,000.00 fine for a licensee who breaches this section. Inspecting for violations of this section is most often performed in a prearranged meeting with a licensee. The inspector will arrive at the establishment and take samples of the liquor being sold and send the samples to a laboratory for testing. The testing is done to insure that there is no adulteration of the liquor sold as outlined in G.L.A. s. 70(1)(2) (see Appendix B). As well as performing this test, the licensee may be required to produce documentation that the liquor being stored for sale has in fact been purchased from a government licensed distributor of alcohol, G.L.A. s. 100(4a) (see appendix B).

Minors: The Underage Threat

In relation to the activities surrounding a bar and customer service in general, the sale of alcohol to a minor is a heavily penalized offense. The legal drinking age in Alberta is eighteen years of age; anyone under the age of eighteen is a minor and is neither allowed to enter an establishment with a liquor primary license nor, of even greater importance, consume liquor within that premise. This is one of the notable differences between the

G.L.A. (1996) and the G.L.C.A.A. (1924). In 1924 the legal age for consumption was twenty-one, in comparison to eighteen in 1996. Nonetheless, the offense of selling or giving alcohol to a minor has been a continued point of concern throughout the decades following 1924. The problem of minors attempting to gain entrance into a bar for the purposes of obtaining alcohol is a constant battle for bar owners and their employees. For a thrill-seeking minor, defying the imposed age restriction placed on them becomes a challenge. By establishing an age where the use of alcohol is not allowed, there is a boundary instituted to a world perceived by many youth as being full of intrigue and excitement. This is not to say that the creation of a legal drinking age is wrong; nonetheless, it has been seen to have this effect. Some minors have become very inventive in their attempts to gain access to the places of forbidden pleasures. Beyond just trying to sneak past the *guards* or attempting to bribe their way in, many underage persons go to great lengths to falsify identification in order to achieve entrance to *The Bar*. In gaining access to alcohol and the bar, a minor has broken G.L.A. s. 84(1) (see Appendix B) and faces possible legal action. The threat of legal sanctions under this section has been relatively ineffective as the onslaught of minors persists on a regular basis.

Regardless of it being illegal for a minor to attempt and/or succeed in obtaining alcohol, it is also illegal for anyone to provide alcohol to a minor. Alcohol may be provided to minor under specific conditions, during the performance of a religious ceremony (see Appendix B for G.L.A. s. 85), and a parent or guardian may give liquor to a minor (see Appendix B for G.L.A. s. 84[3]). In an effort to thwart a minor's attempts to

obtain liquor outside of these allowable instances, the law places the responsibility on the bars and licensed liquor stores to prevent a minor from having access to alcohol.

Minors: Penalties and Procedures

The Licensee Handbook s. 5.1(12) through s. 5.1(23) outlines the procedures required by the licensed premises that they must follow in order to prevent minors from entering the bar (see Appendix B, The Licensee Handbook). The Alberta Gaming and Liquor Commission (A.G.L.C.) penalty guidelines provide a licensee with a fairly substantial reason for diligence in this matter. Upon conviction of the first offense for permitting a minor entrance to a licensed premises and selling liquor to the minor, the penalty is a closure of the establishment for five to seven days and/or a fine up to $5000.00. Receiving the maximum penalty could be a great deterrent and, therefore, there are diligent efforts made by the staff to prevent minors from entering nightclubs and bars.

The Licensee Handbook s. 5.1(12) states that the proper photograph identification should be requested from anyone who is of *questionable age*. The definition of questionable age is a person who appears to be under twenty-five years of age. Even persons who may have attained the status of a *regular* should be asked for proof of age as they may have gained entrance previously by using false identification. Most bars have enacted a policy which requires those desiring entrance to have two pieces of I.D. in the event that the first piece presented is of a questionable nature. Even above and beyond producing a second piece of I.D., considered appropriate by the A.G.L.C., a sample signature may be taken and matched to the one on the I.D. for further proof of age. In the

event that the licensee is not satisfied that the person is of legal drinking age, even if all the required procedures have been taken, they are expected to deny the person entrance to the bar.

Due diligence on the part of the bar staff is required as they are ultimately responsible, even if procedures were followed, in the event that a minor is discovered by an inspector on the premises and/or in possession of alcohol. An inspector, during the course of performing his duties, may request proper identification from any patron that is considered to be of questionable age. If the inspector is not satisfied that the person is of drinking age a report will be filed and the licensed establishment may face the penalties associated with G.L.A. s. 72 (see Appendix B). The bars' ability to produce evidence of diligence in taking the proper steps to prevent entry of a minor may act as a mitigating factor in the final decision regarding the sanction imposed.

Minors: The Police and Falsified Identification

One final aspect concerning the interaction of a bar with a potential minor entails the involvement of the police. The Licensee Handbook s. 5.1(23) suggests that a licensee should consider contacting the police in the event that a minor attempts to purchase liquor or gain entry to a licensed premises. This is in fact a fairly powerful deterrent to a minor. The possibility of *serious* consequences is often not a concern until the threat of police involvement becomes a potential reality. Merely being denied entrance to a bar is of little concern to the minor who will often just leave and try to find another bar where their efforts may gain them success. If it appears to the bar staff that identification has been

altered or falsified, they do not have the authority to seize the person's identification. They can nevertheless inform the individual that they would like to hold onto the I.D. for inspection by the police. While the person is more than welcome to await the police's arrival quite often a minor with falsified or altered I.D. will exit the premises, often without their identification, for fear of police involvement and possible repercussions. In these circumstances, the licensee will generally turn over the collected I.D.s to the liquor inspectors or police upon their next visit to the premises.

Service After Hours: An Example of the Entire Process

Another area of the bar business that is frequently investigated by the liquor inspectors is service or consumption after hours. In Schedule 3 of the G.L.R. the permitted hours of operation for an establishment with a Class A liquor license are from 10:00 a.m. to 2:00 a.m. (see Appendix B). The G.L.R. s. 92(1) (see Appendix B) requires that no liquor may be sold or provided outside the permitted hours of sale, and further, that no consumption of alcohol may take place in a licensed premises except during the set hours of sale and up to one hour after that established time. The G.L.A. s. 65(2) and s. 68(3) (see Appendix B) are the relevant sections under which the regulations are enforced. In the following case from Calgary, the complete process and procedures from inspection to hearing and disposition were made available to the author and will be presented here as an example of the process from start to finish. To ensure the licensee and their employees anonymity, the names of the establishment and the employees will not be included, nor will the dates when the events occurred.

On the date noted in the incident report by the A.G.L.C. inspectors, they entered the premises after producing their identification to the door staff. While in the bar they observed that between 2:30a.m. and 2:48a.m. a liquid was being poured into glasses for the purpose of consumption at one of the service bars. They then identified themselves to the bartender and informed him that they would be seizing the drinks which they had just observed being poured. They were informed by the staff that no money had exchanged hands and that the drinks had been *rung in* before 2:00 a.m. Despite this fact, the inspector told the staff that the liquor license stated that service ends at 2:00 a.m. with consumption of drinks poured before 2:00 a.m. extending until 3:00 a.m. which applies to staff members as well as patrons.

One of the staff members after being advised that the drinks would be seized began tipping the glasses over, spilling the contents and breaking the glass on a ledge behind the service bar. The staff were informed to return any unbroken glasses and their contents to the bar for seizure, however no contents were available for recovery. At that time the manager in charge was informed that a report regarding the incident would be submitted to the board for consideration of action to be taken against the establishment.

Three days after the incident, the bar received a copy of the incident report and eight days following they were requested to attend a hearing regarding the matter. A hearing is not always requested by the board. What often occurs is that the board reaches a decision and informs the licensee of the noted infraction and penalty of license suspension or stated fine. The licensee may request a hearing regarding the incident to argue their case or they may abide by the board's decision. In this particular situation, a violation of the G.L.A. s.

96 (obstruction of an inspector in course of performing his duties) (see Appendix B), was deemed serious enough to warrant an immediate hearing.

At the hearing the representative of the licensee explained that a misunderstanding on the part of the employees was the reason for their inappropriate, but nonetheless, inexcusable behavior. In addition, the two employees had been suspended from work without compensation as a result of their behavior. These mitigating factors were considered by the board and resulted in a decision of a license suspension for two days, the dates of which are determined by the board, or payment of a $500.00 fine in lieu of the two day closure.

Other sections of the G.L.A. and G.L.R. that are frequently investigated by liquor inspectors are G.L.A. s. 66 (see Appendix B) which involves the activities and conduct of patrons in the liquor premises, and G.L.R. s. 91 (see Appendix B) which is concerned with the illegality of serving someone or permitting someone to consume alcohol who is apparently intoxicated by alcohol or a drug. These two sections outlined in the G.L.A. and G.L.R. are of great interest to the bar because of issues of civil liability and use of force by bar staff. These issues are further investigated and explained in later chapters of this paper.

Present Day Concerns Regarding Alcohol in Alberta

As the experiment with government control of alcohol continues in Alberta, so does the concern that Albertans have regarding alcohol and its effects on society. Some of the issues pertaining to alcohol are the same today as they were before the turn of the century.

A concern regarding the relationship between alcohol consumption and crime has endured over time. As society as a whole has evolved in Alberta over the past seventy years, so too have concerns regarding alcohol evolved. One concern which has evolved, and legislation prohibiting it has become more punitive, is drinking and driving.

Illegal Importation and Sale of Liquor

One concern regarding alcohol that has maintained a degree of visibility and interest is the importation and sale of *illegal* liquor. The liquor that is considered *illegal* today in Alberta is illegal not because it cannot be consumed in Alberta, but because it was illegally imported into Alberta from the U.S.A. in order to avoid paying the government taxes that are placed on alcohol in Canada. Most of the bottle price (83%) is Federal and Provincial taxes (Sillars, 1984, p. 16). One instance of 'Rum-Running in the 1990s', involved the Lethbridge R.C.M.P., after the investigation of a tip, seizing "282 cases of spirits, worth about $80,000" (Sillars, 1984, p. 16). There is evidence which shows that the current difference in liquor prices between the U.S. and Canada may provide an incentive to illegally import liquor. Sillars (1994) states that,

> a 1.75 - litre bottle of spirits selling for only $15 to $18 in the U.S. retails for around $50 in Alberta. With such a gaping spread, smugglers can easily lure customers with prices 30% lower than on legal liquor, yet still make more than $15 per bottle (p. 16).

The Association of Canadian Distillers (A.C.D.) claims the root cause for this smuggling is the over-taxation of liquor, which results in people buying smuggled liquor as a form of tax revolt (Sillars, 1984, p. 16). The A.C.D. have called for a reduction in the liquor taxes

in order to make smuggling less profitable, and argue that the government would make back this revenue by recovering the revenue lost to the smuggling industry (Sillars, 1984, p. 16). The R.C.M.P. in association with the A.L.C.B. and Canada Customs, planned to create an anti-smuggling task force. "However, a central element of the problem authorities face is that smugglers have no trouble finding customers for their cheap liquor" (Sillars, 1984, p. 16). For another example pertaining to illegal liquor see Davis Sheremata (1996), "A Tax Protest of a Decidedly Different Sort". This article states that moonshine is alive and well in Alberta. The R.C.M.P. are noted as stating that one of the reasons for this illegal liquor being produced is avoiding the taxes placed on liquor in the province (p. 29).

Physical Violence Allegedly Associated With Alcohol

Another concern regarding liquor consumption at bars and nightclubs is the reported occurrence of sexual assaults. In "No Place for Young Teens", Sheremata (1996), discusses the alleged sexual assaults on two females, aged twelve and fifteen, said to have occurred in an Edmonton nightclub. "Raped in the Roost?" describes another incident of sexual assault where "a woman who had drunkenly bumbled into the men's washroom was pulled into a toilet stall and raped for 10 minutes; vaginally, orally and anally" (Chan, 1994, p. 31). One final example is from Calgary. Lumman reported in The Calgary Herald that police doubled their patrols on Electric Avenue, a popular strip of bars, as a result of a woman being sexually assaulted and robbed. "It was the second time in as many weeks that a woman was raped in the same alley behind the bar strip" (The Calgary

Herald, 1996, August 4, p. H - 3). Despite Alderman John Lord stating that the aforementioned occurrence could have happened anywhere in Calgary, he still favored an increased police presence and improved lighting on and around Electric Avenue (The Calgary Herald, 1996, August 4, p. H - 3).

In addition to sexual assaults, other assaults have also been a source of community anxiety. Assaults include a broad spectrum of aggressors and victims. In "Beer, Brawls, and Blood", Sillars (1995) described one instance where "[a] man was slashed in the throat with a broken glass" (p. 20); in another, a businessman, his brother and two clients were attacked by "a gang of about 20 white men [armed] with clubs and other weapons"; and finally, two police officers were attacked while attempting to help bar staff remove a pair of unwelcome patrons from the bar (p. 20). Another related problem occurs when bar employees are charged for their violent conduct towards patrons. One of the incidents resulted in a patron sustaining injuries that rendered him paralyzed below the neck (The Calgary Herald, 1997, January 1, p. B - 1). The other case was even worse, a customer died after arriving at the hospital (The Calgary Herald, 1996, June 6, p. B - 2). Crime and violence which is associated with the bars and nightclubs, and therefore liquor, continues to be a cause of concern for members of society in Alberta.

Impaired Driving

The final cause of liquor anxiety that will be presented is the operation of a motor vehicle by someone who has consumed alcohol to the point of intoxication. Effective as of 1 December 1969, amendments to the Canadian Criminal Code required drivers to give

breath samples to policemen on demand and established 0.08% as the legally impaired blood alcohol level (Smart, 1972, p. 1122).

The Canadian Criminal Code states:

> s. 253. Every one commits an offense who operates a motor vehicle or vessel or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft, or railway equipment, whether it is in motion or not,
> (a) while the person's ability to operate the vehicle, vessel, aircraft, or railway equipment is impaired by alcohol or a drug; or
> (b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood. R.S.C. 1985, c. 27 (1st Supp.), s. 36; c. 32 (4th Supp.), s. 59.

Statistics Canada (1988) reports that the penalties for impaired driving are:

1. first offense - minimum $300 fine and 3 months driving prohibition;
2. second offense - minimum 14 day prison term and six months driving prohibition;
3. subsequent offense - minimum 90 day prison term and 1 year driving prohibition (p. 2).

Despite these official sanctions, the occurrence of drinking and driving persists with sometimes fatal results. In Alberta between 1993 and 1994, there were twenty-two charges laid for impaired driving causing death, and another 217 charges were laid for impaired driving causing bodily harm (Statistics Canada, 1995, p. 4). The penalties for causing bodily harm and death are a maximum penalty of ten to fourteen years incarceration, respectively; while apparently quite severe, these penalties have nonetheless been unable to fully prevent impaired driving. It is promising to note, however, that the general trend in Alberta over the last ten years has shown a fairly substantial decline of 48.0% in the number of persons charged with impaired driving (Statistics Canada, 1995, p. 6). This decline, however, cannot be fully credited to the penalties imposed. Other

factors may be involved. For example, public awareness of the issue brought about by organizations such as Mother's Against Drunk Driving (M.A.D.D.), educate the masses (Rothe, 1991, p. 5) and may have had an effect. Another aspect of the law, civil liability in tort law that has seen alcohol providers held responsible for the conduct of their patrons, may have resulted in a bar industry more careful in ensuring their customer's safe passage home and this may also have had an effect. As will be discussed next, one factor responsible for the emergence of civil liability to licensees and their employees was public attitudes towards imparied driving (Solomon & Van de Kleut, 1987).

III. Alcohol Providers and Civil Liability

Introduction: Factors Involved in Alcohol Providers Encountering Civil Liability

The results of the Supreme Court of Canada's decision in the *Jordan House Hotel Ltd.* v. *Menow and Honsberger* (1973) discussed further below has greatly affected of all those associated with providing alcohol to others. Civil liability had now become a threat to alcohol providers. "In this landmark case, the Supreme Court of Canada imposed a common law duty on alcohol providers to protect their intoxicated patrons" (Siess, Solomon, Usprich, and Van de Kleut, 1988, p. 11). Unlike the pre-Prohibition saloons, where "the only restraint upon outrageous behavior in the saloons was the one imposed by the conscience of the owner" (Gray, 1972, p. 11), contemporary bar owners have legislated duties, as well as their conscience, to ensure the safety and wellbeing of their patrons. Violation of the G.L.A. imposes penalties on the licensee. Additionally, the threat of a lawsuit, with an enormous monetary settlement, places another restraining factor on the licensee regarding the activities engaged in by guests of their establishment.

Solomon and Van de Kleut (1987) discuss the key ingredients which were involved in civil liability becoming a threat to alcohol providers. The major factors responsible are (p. 1):

1. The expansion of the duty to control the conduct of others.
2. Mandatory breath and blood testing.
3. The narrowing of the traditional defenses.
4. Rising damage awards.
5. Changes in public, government and judicial attitudes.

The first factor involves how the law has expanded its boundaries such that an individual may now be held responsible for the comportment of others.

> While the courts pay lip service to the principle that you are not your brother's keeper, they have greatly increased the number and kinds of situations in which one person will be held accountable for the conduct of another (Solomon & Van de Kleut, 1987, p. 1).

One of the territories that is included in the expansion is that of alcohol provider liability. As was previously mentioned, there exists a great deal of concern regarding alcohol's intoxicating effects and the actions of people under its influence. The extension to alcohol providers of the duty to control was inescapable, "given the intoxifying effects of alcohol, the annual toll of alcohol-related deaths and injuries, and the provincial prohibitions against selling alcohol to the intoxicated" (Solomon & Van de Kleut, 1987, p. 2). As a result of the expansion of liability to include alcohol providers, any member of the bar staff may be held liable for their actions in serving alcohol.

The second factor included by Solomon and Van de Kleut (1987) is the mandatory breath and blood testing. While the use of the breath samples is an effective tool for the police in catching and convicting drunk drivers who have exited a bar; for licensees, it becomes evidence of possible *over-service* on the part of the establishment. A key element in civil litigation is determining that the bar owner or employee was negligent in meeting the standard of care that is *owed* to the patron. A breath or blood sample that exceeds the allowable blood-alcohol limit (80 milligrams of alcohol per 100 milliliters of blood) may be used against the defendant in proving negligence.

Solomon and Van de Kleut (1987) discuss the use of contributory negligence by a defendant against the plaintiff in their overview of the third factor, the narrowing of traditional defenses. "The defense of contributory negligence involves the defendant's

assertion that the plaintiff's own negligence contributed to the plaintiff's injuries" (Solomon & Van de Kleut, 1987, p. 2). If the defendant is successful in using this defense, the court will then assign a certain proposition of fault, and therefore a corresponding proportion of the damages to each party. Courts, in rendering their decisions, "are apportioning liability heavily against alcohol providers and occupiers" (p. 2). Another complexity surrounding this defense is in its use in cases of third party liability. In cases of third party liability the plaintiff is someone who was injured by a patron of the licensed establishment and is seeking damages from the licensee and/or the server (Hutton, 1993, p. 2). Therefore, even if the bar was approportioned a small percentage of the liability, they may still be responsible for the entire amount of the judgment under joint and several liability. Joint and several liability entitles a plaintiff to recover the damages awarded them by the court from any of the defendants named in the lawsuit, in the event that one of the parties is unable to meet the financial obligations required them by the court (Hutton, 1993, p. 2).

Third party liability is also involved in Solomon and Van de Kleut's (1987) fourth factor, rising damage awards. "Since such awards will almost always exceed the intoxicated patron's insurance and assets, the plaintiff must sue the provider or occupier in an effort to recover full claim" (Solomon & Van de Kleut, 1987, p. 2). This demonstrates a possible process where a bar may be named in a civil suit as a third party where an intoxicated patron has caused damage to someone.

The final factor considered by Solomon and Van de Kleut (1987) are the changes in public, government and judicial attitudes. They state that the publicity regarding alcohol-

related accidents and deaths has heightened public awareness, and mobilized the grassroots organizations to push for stricter enforcement and harsher sentences for those involved in drinking and driving (Solomon & Van de Kleut, 1987, p. 2). This is not unlike the situation previously discussed regarding the campaigns for Prohibition and Temperance. Compelled by the prevailing conditions, the grassroots organizations of the early 1900's in Alberta, such as the Temperance, Moral Reform Society, and W.C.T.V., fought against open, public drinking. Despite losing the Prohibition law, they did achieve stricter controls regarding alcohol. It appears that history is repeating itself. Due to the efforts of grassroots organizations, such as Mothers Against Drunk Driving (MADD), "it is not surprising, therefore, that judges and juries have become less tolerant of alcohol providers and occupiers" (Solomon & Van de Kleut, 1987, p. 2).

Expanding on the factors raised by Solomon and Van de Kleut (1987) there is also the patron's use for drunkenness as a *defense*. "In fact, if it is a really good party some of the participants can usually be counted upon to become 'drunk enough' to do things that are truly 'out-of-character'" (MacAndrew & Edgerton, 1969, p. 3). Due to the intoxicating effects of alcohol, a person may do something after a *few drinks*, that under sober conditions he/she would not. "Although regrettable, such episodes have nothing of the mysterious about them, for 'after all, they were drunk, weren't they?'" (MacAndrew & Edgerton, 1969, p. 3). This statement appears to remove responsibility from the person involved. The idea is that, if sober, they would never have done any such thing, and therefore they are not responsible; the alcohol is. However, it is quite unrealistic and would prove to be an effort of futility to place liability on the inanimate object, attempting

to sue a half-empty bottle of scotch because you got hurt after drinking the first half. However, extending that liability to the licensed establishment provides a realistic defendant from whom damages may be sought. The bar becomes at fault as they served the individual the *cause* of their distress, the alcohol. The bar, in essence, became a catalyst in turning the sober individual into the unaware, uninhibited and uncontrolled drunk. While the law and the courts have imposed a *duty to control* on the licensed establishments, the statement by Solomon and Van de Kleut (1987) that the court decisions apportioning greater liability against the bars (p. 2) appears to support the patron's *defense of drunkenness*.

Common Law: Duty of Care and Definition of Neighbor

The extension of the common law duty to include an alcohol provider's responsibilities for their patrons was a new concept in Supreme Court of Canada's decision in *Jordan House Hotel Ltd.* v. *Menow and Honsberger* (1973). The notion of a common law duty, however, has a much longer history. *M'Alister (or Donoghue)* v. *Stevenson* (1973) is considered to be a landmark case in establishing the ides of a common law duty. The first question which was given consideration in *M'Alister (or Donoghue)* v. *Stevenson* (1973) concerned to whom a duty was required. The answer to this question, as well as the elaboration of the answer, was provided by Lord Atkin.

> The rule that you are to love your neighbor becomes in law, you must not injure your neighbor, and the lawyer's question, Who is my neighbor? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who, then, in law is my neighbor? The answer seems to be -

> persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question (*M'Alister [or Donoghue]* v. *Stevenson*, 1973, p. 580).

In common law, then, there is a duty upon an individual to give consideration to those whom their acts or omissions may affect in a harmful way. This being the case, a reasonable person should therefore not act, or omit an act, which they can foresee befalling harm on another. According to this precedent, then, if a reasonable person can foresee someone being affected by what they do, they are by definition, their neighbor; and as their neighbor they owe to them a duty of care, a duty to act in such a way as to prevent harm from coming to them.

In the discourse of Lord Macmillan regarding *M'Alister (or Donoghue)* v. *Stevenson* the "cardinal principle of liability" as well as to whom the burden of proof lies with is established.

> The cardinal principle of liability is that the party complained of should owe to the party complaining a duty to take care and that the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty (1973, p. 619).

In order for someone to be considered liable, there must first be a duty to take the amount of care required of them. Once that has been established, burden of proof resides with the plaintiff, that they have been harmed as a result of the defendant not fulfilling their required duty.

Establishing Foreseeable Risk

The magnitude of the importance of the discourse in *M'Alister (or Donoghue)* v. *Stevenson* (1973), in establishing the principle of liability by defining common law duty and providing a legal definition of who one's neighbor is, cannot by overstated with regard to its importance for tort law. Nevertheless, there remains one aspect which requires further definition, the concept of foreseeability. To owe a duty of care to someone requires that the harm which may come to them is reasonably foreseeable. If it is not reasonably foreseeable that harm would come to a person as a result of one's acts or omissions, they are not by definition your neighbor and, therefore, there is no duty owed to them. *Bolton and Others* v. *Stone* (1951) was instrumental in defining foreseeable risk with regard to a *reasonable man*.

Lord Reid in his dissertation concerning *Bolton and Others* v. *Stone* (1951) provided discourse regarding the reasonable man and the degree of risk. "I think that reasonable men do, in fact, take into account the degree of risk and do not act on a bare possibility as they would if the risk were more substantial" (p. 865). The degree of risk was further separated into two components: the chance of the occurrence, and the potential consequences resulting from the occurrence. The *reasonable man* is required to give both of these components consideration in the contemplation of this act or omission (*Bolton and Others* v. *Stone*, 1951, p. 865). Lord Reid further explained, that in the consideration of the chance of the occurrence and its potential consequences that it was not required to be an exhaustive calculation when he stated, "so that anything more than a fantastic possibility must be regarded as a reasonable possibility" (*Bolton and Others* v. *Stone*,

1951, p. 866). Where risk is considered merely a chance occurrence that has therefore a very low foreseeability, the person should not be held accountable.

In the analyses of *Mayfield Investments Ltd.* v. *Stewart et al.* (1995) the Supreme Court of Canada referred to the *modern* approach adopted in *City of Kamloops* v. *Nielson* (1984) to ascertain whether a duty of care exists (p. 229). Mr. Justice Wilson states, in *City of Kamloops* v. *Nielson*, that in order to establish the existence of a duty of care,

> ... two questions must be asked:
> (1) is there a sufficiently close relationship between the parties ... so that, in the reasonable contemplation of the authority, carelessness on its part might cause damage to that person? If so,
> (2) are there any considerations which ought to negative or limit (a) the scope of the duty and (b) the class of persons to whom it is owed or (c) the damages to which a breach of it may give rise? (pp. 662 - 663).

These considerations form the basis for decisions by the Supreme Court of Canada regarding the existence of a duty of care. The question to be given consideration beyond this basis is, how has the duty of care been expanded to include alcohol providers responsibilities to their patrons, as well as to those who may be affected by the actions of the patrons.

Duty of Care and Service of Alcohol

Jordan House Ltd. v. *Menow and Honsberger* (1973)

The central feature of this case was determining the existence of a duty of care on the part of a hotel beverage room for a patron whom they had served. In the cases presented in the lower courts the defendant, Jordan House Ltd., was held liable for a portion of the damages claimed by the plaintiff, Menow. The defendant appealed the case to the

Supreme Court of Canada in an attempt to have the decision and their assessed liability overturned. Menow, a frequent patron of the bar, entered the bar with two other men and drank beer. A short time thereafter the other men left, leaving Menow alone. Approximately five hours after his arrival it was determined by staff that he was disturbing other patrons and he was ejected from the bar. He was given a ride part of the way home by an unknown third person who was not in the bar. After being dropped off he continued to walk home. About a half hour after being ejected from the bar he was hit by a vehicle driven by Honsberger. After the incident Menow sued both Honsberger and the hotel. The claim against the hotel was that in their participation in the incident they had breached their duty of care towards Menow by ejecting him in a state of intoxication, which was one of the elements argued to have caused the accident.

The Supreme Court upheld Menow's claim that the hotel had failed in their duty to protect him from harm. In the first place, the Court concluded that there was a close enough relationship between the hotel and Menow to warrant a duty of care. "It was an invitor - invitee relationship with Menow as one of its patrons, and it was aware, through its employees, of his intoxicated condition..." (*Jordan House Ltd.* v. *Menow*, 1973, p. 111). Due to Menow's state of intoxication, being alone and the hotel being located adjacent to a busy highway, the Justice concluded that there was a foreseeable risk of Menow becoming injured if he were to be ejected from the bar and walk home.

With a duty of care bestowed upon the hotel, and the chance of injury being probable, all that remained was to establish that Menow's injuries were a result of the breach of the duty by the hotel. The breach of the duty of care was based on two factors. First of all,

they were faulted in their handling of Menow by serving him alcohol after he was visibly intoxicated. In violating Ontario's Liquor License Act s. 53(3) which prohibits the sale of alcohol to a person who is apparently intoxicated, Jordan House Ltd. had not met a common law duty of care. Secondly, although the Liquor License Act s. 53(6) requires the removal of a patron who is intoxicated, the judge stated that a common law duty of care to protect Menow from harm would override the requirements of the act (*Jordan House Ltd.* v. *Menow*, 1973, p. 108). By taking action to remove Menow from the beverage room, the staff had a common law duty of care, to insure that their actions do not result in harm coming to him. This was, again, a breach of their duty of care owed to Menow.

The final appeal was dismissed and each party, Menow, Honsberger, and the Jordan House Ltd. were all held 1/3 liable for the damages sought by Menow. Menow was held 1/3 liable for his contributory actions of drinking to excess. Honsberger was held 1/3 liable for his part of the accident as a reckless driver, and the hotel was held 1/3 liable for its negligent role. Honsberger and Jordan House Ltd. were held "jointly and severally liable", which translates into the entire 2/3 of the damages awarded by the Court being the sole responsibility of either of the defendants if one of them is unable to pay their share.

With regard to the concerns held by alcohol providers, this was a monumental case. For the first time in Canada, the Supreme Court had held a licensed establishment responsible for the safety of a visibly intoxicated patron. Beyond this, however, the test applied to this case provided by Mr. Justice Ritchie added a more general statement of a licensee's responsibility.

> In Ritchie's view, the staff breached their duty by serving Menow past the point of intoxication – their obligation was to prevent intoxication and not simply to protect patrons once they became intoxicated (Siess, Solomon, Usprich, and Van de Kleut, 1988, p. 12).

According to Siess et al. (1988), it has been the broader definition of duty by Mr. Justice Ritchie that has been tested in subsequent cases concerning an alcohol provider's liability (p. 12). Further cases that apply to this test are: *Picka* v. *Porter and the Royal Canadian Legion* (1980), *Crocker* v. *Sundance Northwest Resorts Ltd.* (1988), *Schmidt* v. *Sharpe and the Arlington House Hotel Ltd.* (1983) and *Hague* v. *Billings* (1993).

Mayfield Investments Ltd. v. *Stewart et al.* (1995)

A final example regarding an alcohol provider's responsibility in serving a patron alcohol and the consequences resulting from the patron's intoxicated acts, is *Mayfield Investments Ltd.* v. *Stewart et al.* (1995), decided by the Supreme Court of Canada. This case is investigated as its origins are in Alberta and it therefore provides a summary of the Alberta Statutes within the example. Further, due to the events that transpired in the case, Mayfield Investments Ltd., the alcohol provider, was released from their legal duty and therefore their portion for liability previously assessed to them by the lower court.

Mayfield Investments Ltd. operates a licensed theater/restaurant in Edmonton, Alberta. The plaintiff in this case was part of a group of four that dined at the theater/restaurant as part of a company Christmas party. The two sisters-in-law, who worked together at the company having the party, went to the party with their husbands. All four arrived at the Mayfield Inn together, with Stuart Pettie driving the car. Both men

consumed alcohol over the course of the evening, while neither of the women consumed any alcohol. After the show the four left the Mayfield Inn and Stuart Pettie, despite consuming approximately fourteen ounces of rum in a five hour period, proceeded to drive the group home. Though driving in a cautious manner, the road conditions were not ideal and he lost control of the car, injuring Gillian Stewart, the plaintiff. As a result of the accident, Gillian Stewart was rendered a quadriplegic.

Gillian Stewart brought civil action against Stuart Pettie, the City of Edmonton and the Mayfield Inn (Mayfield Investments Ltd.). The actions against the first two defendants were settled out of court. Although the lower court, Alberta Court of Queen's Bench, found no liability on the part of the Mayfield Inn, a provisional 10% was awarded to Stewart against the Mayfield Inn, "... in the event that he was overturned on appeal" (*Mayfield Investments Ltd.* v. *Stewart et al.*, 1995, p. 226). Judge Agrias found the Mayfield Inn not liable as there were no visible signs of intoxication on the part of Stuart Pettie, and further, he was in the company of two sober individuals who were aware of the circumstances. If the two sober women, present with Pettie the entire evening, were not concerned regarding Pettie's ability to drive, it is questionable as to why the Mayfield Inn would themselves have concerns.

At the Alberta Court of Appeal, Judge of Appeal Hetherington and Judge of Appeal Kerans wrote separate but convincing judgments regarding this case. Judge of Appeal Hetherington found the Mayfield liable as they had, "... breached two duties of care by serving Pettie past the point of intoxication and then by failing to take any steps to ensure that no harm came to third parties" (*Mayfield Investments Ltd.* v. *Stewart et al.*, 1995,

p. 227). Judge of Appeal Hetherington continued, that the mere presence of the two sober individuals was not sufficient in alleviating the foreseeability that Pettie may drive home. As well, regardless of Pettie not visibly displaying signs of intoxication, Judge of Appeal Hetherington stated, "that the waitress should have known Pettie was becoming intoxicated, since she knew how much he had to drink" (*Mayfield Investments Ltd.* v. *Stewart et al.*, 1995, p. 27).

Judge of Appeal Kerans acquiesced with the judgments of Judge of Appeal Hetherington in writing a separate judgment on both issues mentioned above. Judge of Appeal Kerans stated,

> that the judge erred in finding that Pettie had been placed in the care of his sober wife and sister. The fact that Pettie was sitting with sober people is irrelevant without inquires being made as to the relationship between them.... The presence of the two sober people cannot relieve the Mayfield of liability, since there was no evidence that Mayfield knew they had all come together in the same vehicle (*Mayfield Investments Ltd.* v. *Stewart et al.*, 1995, p. 27).

Judge of Appeal Kerans further concurred that the server should have been aware that Pettie was intoxicated and, therefore, that a risk of him driving a car existed. The Alberta Court of Appeal determined that the Mayfield was negligent and upheld the Court of Queen's Bench judgment of a 10% apportionment of liability.

Before continuing with the final judgment rendered in *Mayfield Investments Ltd.* v. *Stewart et al.* (1995) by the Supreme Court of Canada, a brief investigation of Alberta's liquor laws is presented as background. G.L.R. s. 91(a) (see Appendix B) prohibits the sale of alcohol to a person apparently intoxicated by liquor or a drug. Further, the Licensee Handbook s. 1.6(1) (see Appendix B) states that, due to increasing court awards,

the licensee and its staff should be aware of potential liability creating situations. The Licensee Handbook s. 1.6(2) (see Appendix B) outlines what the licensee and their staff should do in order to reduce the likelihood of liability creating situations. As was previously discussed, in *Jordan House Ltd.* v. *Menow and Honsberger* (1973) one breach of the hotel's duty of care was in violation of Ontario's Liquor License Act. The G.L.A., G.L.R., and the licensee Handbook may create a similar potential duty of care for licensees and their employees in Alberta, as well as a means for patrons to seek damages regarding such issues.

Mr. Justice Major in writing the judgment in *Mayfield Investments Ltd.* v. *Stewart et al.* (1995) noted that this is the first case of its kind to be presented before the Supreme Court of Canada (for lower court examples see *Crocker* v. *Sundance Northwest Resorts Ltd.* [1988], *Schmidt* v. *Sharpe et al.* [1983] and *Hague* v. *Billings* [1993]). It is the first case in which a third party is claiming damages against a licensed establishment due to injuries received through the actions of a patron who had become inebriated in the establishment.

> This raises the question of whether the establishment owed any duty of care to that third party. If a duty of care is found to exist, then it is necessary to consider what standard of care was necessary and whether that standard was met. Another consideration is whether there was a causal connection between the defendant's allegedly negligent conduct and the damage suffered by the plaintiff (*Mayfield Investments Ltd.* v. *Stewart et al.*, 1995, p. 228).

Mr. Justice Major in writing the judgment stated that the risk to a third party resulting from the patron driving while intoxicated does exist and is foreseeable. Additionally, a duty of care had been demonstrated to exist between the Mayfield Inn and Stewart due to

the Mayfield Inn's proximity to Stewart, as well as her being, "... a member of a class of persons who could be expected to be on the highway" (*Mayfield Investments Ltd.* v. *Stewart et al.*, 1995, p. 230). The respondents claimed that by serving Pettie past the point of intoxication and by not taking steps to ensure he did not drive; that the Mayfield Inn had breached two duties of care which related to Stewart's injuries. Mr. Justice Major responded to these claims by stating,

> [I] believe that this argument confuses the existence of the duty of care with the standard of care required of Mayfield. The question of whether a duty of care exists, is a question of the relationship between the parties, not a question of conduct. The question of what conduct is required to satisfy the duty is a question of the appropriate standard of care (*Mayfield Investments Ltd.* v. *Stewart et al.*, 1995, p. 231).

Mr. Justice Major agreed with the decision rendered by the Alberta Court of Appeal that the Mayfield Inn could not be excused from liability assessed as they had over-served Pettie. It was not, however, based on Alberta liquor laws. The law did not apply because it states that an alcohol provider should not serve someone who is visibly intoxicated, and Pettie did not show any visible signs of intoxication. Mr. Justice Major concurred with Judge of Appeal Kerans' assessment that the waitress was aware of the amount consumed because he was running a tab, and therefore should have known that Pettie was intoxicated. Up until this point, the Mayfield was liable.

Justice Major then discussed a point of dissension. "However, I disagree with Court of Appeal that the presence of the two sober women at the table cannot act to relieve the Mayfield of liability (*Mayfield Investments Ltd.* v. *Stewart et al.*, 1995, p. 236). Mr. Justice Major points to the writings of Judge Laskin in *Jordan House Ltd.* v. *Menow* in

making his determination regarding the Mayfield discharge of liability. *Jordan House Ltd.* v. *Menow*,

> ... made it clear that the hotel's duty to Menow in that case could have been discharged by making sure 'that he got home safely by taking him under its charge or *putting him under the charge of a responsible person*...' [italics added by Major J.] (*Mayfield Investments Ltd.* v. *Stewart et al.*, 1995, p. 236).

Due to the Mayfield being aware that the group arrived together, sat together, and left together, it was reasonable for the Mayfield to assume that there was a pre-existing relationship between the people. With a relationship already existing, it was further reasonable for the Mayfield to assume that one of the sober individuals would drive home, or find an alternative method of transportation. In supporting the Mayfield's assumption that a sober person in the group could take responsibility for getting Pettie and the others home safely, there was no risk of harm, and therefore no liability. The Mayfield Inn/Mayfield Investments Ltd. won their appeal, and they were excused from all liability.

These cases provide detailed examples of the potential civil litigation that a bar may face as a result of providing alcohol to their patrons. In each case the judge, in apportioning the damages, included the alcohol consuming patron in the calculations. Nevertheless, the licensed establishment has been assigned a common law duty of care for their patrons, as well as for others who may have harm befall them as a result of the actions of an intoxicated patron. In addition to this initial concern, there further exists the fear of the damage claim being joint and several. An individual seeking damages would most likely look to the licensed establishment since they are likely to carry a more extensive insurance policy than an individual, an easier target to collect the claim from. In

the event that the jointly named individual does not possess the means to pay his/her apportioned amount of the settlement, the bar may find themselves responsible for the entire amount of the award.

One factor that may influence the bartender's decision not to serve is the nature of the bar business itself. "Competition between bars as the same price range lies not in the quality of the commodity, but in the form of intimacy and loyalty between customers with the bartender" (Gusfield et al., 1984, p. 52). As Gusfield et al. (1984) notes, in establishing a relationship with the customer, bartenders are placed in a tenuous or difficult position. "The need to sell alcohol combined with a demonstration of concern for the customer makes the bartender sensitive to the displays of competence which customers put forth" (Gusfield et al., 1984, p. 53). If bartenders, due to concern for a patron, decide against serving an individual any further drinks, they risk embarrassing the customer and losing their business. At the same time, however, they are required to demonstrate concern for customers, as the established relationship of a *friend* requires intervention.

Gusfield et al. (1984) states that "[the] general reluctance to limit the service of liquor in the name of avoiding a dangerous driving situation is not mirrored in a reluctance to intervene with the driving" (p. 57). Although continuing to serve the customer alcohol, other methods of getting the individual home safely may be attempted. This includes directly trying to persuade the person not to drive, as well as seeking out sober friends or other customers who could provide a ride home for the intoxicated individual. Using the local taxi services is one of the most used methods for seeing a customer home safely. Customers may request a cab or the bar may call one for them.

In *Mayfield Investments Ltd.* v. *Stewart et al.* (1995) the plaintiff maintained that they had been, "... 'vigilant' and maintained 'careful observation' of Stuart Pettie, and that this should be enough" (p. 233). Mr. Justice Major, however, disagreed with this statement saying, "... that 'vigilance' is not the same as taking positive steps ..." (*Mayfield Investments Ltd.* v. *Stewart et al.*, 1995, p. 233), which is required when one owes a duty of care to another. It appears, then, that if efforts are made on the part of the bar staff (e.g., positive steps taken to ensure a patron's safe journey home), there should be a reduction in potential liability assessed the bar. However, that will remain for the courts to decide. In the meantime, licensees should be prudent to ensure that their staff are following the suggested precautions outlined in s. 1.6(2) of the Licensee Handbook.

Duty of Care and Occupiers' Liability

Seiss et al. (1988) discuss another area of liability that a licensed establishment may face, occupiers' liability. As well as the liability that revolves around the service of alcohol, "... they may also be held liable in their capacity as occupiers for alcohol-related injuries that occur on or in relation to their property" (Seiss et al., 1988, p. 17). According to Alberta's Occupiers' Liability Act (O.L.A.) s. 1(c) an *occupier* means:

> (i) a person who is in physical possession of premises, or
> (ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter their premises, and for the purposes of this Act, there may be more than one occupier of the same premises (p. 1).

This definition is applicable to all persons involved in the operation of the bar. O.L.A.

s. 1(c, ii) provides a definition of occupier to include those *responsible for* the many facets of operating a licensed premises. For example, a doorman who regulates the entrance into a bar and controls the activities on the premises, the bartenders and servers who provide alcohol which may be served in breakable bottles or glassware, as well as, the potential conduct due to alcohol's intoxicating effects, the buspersons who remove empties and keep the bar free from clutter and finally, the licensee and their managers who oversee the entire operation.

Seiss et al. (1988) discuss the differences in the two type of civil action a bar may face:

> Although it is not widely known, there have been far more alcohol-related suits brought against occupiers than against alcohol providers. However, since the injuries in the occupiers' liability cases usually stem from fights or falls, they are rarely catastrophic in nature. This differs from typical provider liability claims which result from serious car accidents" (p. 18).

Another feature of occupiers' liability claims is that due to their generally smaller monetary claims, a great many of them are handled out of court. In a discussion with one bar owner, a small settlement reached out of court was much preferable to going to court, with its costs, as well as the potential negative publicity that may accompany the case on top of the cost due to the claim itself.

In Alberta, the legal duty of care for the bars' patrons emanates from two legislative sources. First of all is the O.L.A. and its statement of duty and secondly a duty to ensure the safety of the customer is established in the G.L.A.

O.L.A. s. 5 (see Appendix C) directly states that an occupier owes a duty to those who visit the premises. They are required to take care to avoid any reasonably foreseeable

circumstances which may cause harm to a visitor in the course of them using the premises. Section 1(e) provides the definition of a *visitor* (see Appendix B). O.L.A. s. 6 discusses when the common duty of care is applied.

> The common duty of care applies in relation to
> (a) the condition of the premises,
> (b) activities on the premises, and
> (c) the conduct of third parties on the premises (p. 3).

O.L.A. s. 7 through s. 11, discuss variations in the liability bestowed upon an *occupier* (see Appendix C).

The G.L.A. also provides a legal framework in which it could be demonstrated that a bar failed to fulfill its obligations. Section 66(1c) states that the licensee must not allow any conduct on their premises which could cause harm to someone using the facility (see Appendix B). In the civil cases discussed earlier, a breach of the alcohol providers' responsibility not to serve a customer past the point of intoxication was viewed as a breach of their duty of care. It may similarly be argued that a bar in violating G.L.A. s. 66(1c) may also be breaching an imposed duty of care.

Jacobson v. *Kinsmen Club of Nanaimo* (1976)

An example of a licensee being held liable for injuries assumed by an individual under their care is discussed in *Jacobson* v. *Kinsmen Club of Nanaimo* (1976). On Sunday, July 21, 1974 a large group of people gathered in a rented curling rink for a fund raising party that was hosted by the Kinsmen Club of Naniamo. During the course of the events that transpired one man climbed an I-beam and proceeded to *flash a moon* to the crowd below,

much to their amusement. He descended without incident and approximately five minutes later another man proceeded to perform the same stunt, again without incident. The problem occurred when a third man, not as dextrous as the first two, attempted to copy their amusing stunt. On this attempt, however, the man ended up hanging on to the beam, and in an effort to regain a sitting position, he fell and hit Jacobson, the plaintiff, on the head, right shoulder and back. The fall was from approximately 30 feet overhead. The man who fell was not injured and hurriedly left the scene. Although he provided a name to the staff working on behalf of the Kinsmen Club, he was not heard from or seen again.

Judge Toy, in the discussion of the case, determined that the Kinsmen Club were occupiers and as such owed a duty of care to Jacobson as a visitor to the premises. The previous two instances of men climbing the beams provided notice of a foreseeable risk of harm. Despite their success in completing the stunt without hurting themselves or anyone else, it was dangerous. Thus, the Kinsmen Club was required, as an element of their duty of care, to take steps to ensure that it would not happen again.

The Kinsmen Club was judged to be negligent in their role of occupier and due to the injuries sustained by the plaintiff, as well as his time lost at work, the court awarded Jacobson damages to be paid by the Kinsmen Club. The court awarded Jacobson $10,000 for lost wages, as well as $15,00 for pain and suffering (p. 234). For another example of occupier liability involving someone who was consuming liquor see *Niblock* v. *Pacific National Exhibition and City of Vancouver* (1981). In this case the plaintiff sued the defendants after falling over a railing that he claimed was too low. The defendants

claimed that the fall was a result of the plaintiff's intoxicated condition, not that the railing was too low. The defendants were held 75% liable.

Through the legal statutes of the O.L.A., G.L.A., G.L.R. and the Licensee Handbook, as well as the precedents established through the cases of tort law, alcohol providers have been endowed with a common law duty of care. Breaches of this duty of care may result in damage claims and huge monetary settlements against a licensee and their employees. Further, the establishment may incur fines set out by the G.L.A. penalty guidelines or even temporary closure and revocation of the liquor license. The public, judges and law-makers have in essence placed controls and limitations surrounding the business of operating a licensed establishment. This appears to place a bar in a somewhat paradoxical situation. In operating their business, they provide alcohol to their patrons, who are often desirous of the intoxicating effects that alcohol provides, yet they must impose constraints upon the customer who is nearing intoxication as a result of the duty of care bestowed upon them. The placing of constraints upon a customer's alcohol consumption is, nonetheless, antithetical to their business goal of selling alcohol. As has been shown in the cases described, however, the loss of business due to the imposition of constraints may be quite preferable to paying the damage claims assessed against them from a resulting civil suit.

MacAndrew and Edgerton (1969) state, "we all know, for instance, that when people drink, the odds are appreciably increased that some unpleasant incident, ...may ensue" (p. 3). Whether this unpleasant incident occurs as a result of a change in one's demeanor, a loss of inhibitions, an impairment of one's judgment or a loss of motor shills and reaction time, it is associated with the consumption of alcohol. Further, the changes that may be

exhibited exist in a broad spectrum of possibilities (MacAndrew & Edgerton, 1969, p. 16). The diversity of reactions to alcohol in people's comportment is as diverse as the people who may consume liquor. Additionally, the diversity can be expressed within a single individual with each new occasion of alcohol consumption. "The point is that, with alcohol inside us, our comportment may change in any of a wondrously profuse variety of ways. Indeed, it is precisely this variability that constitutes the problem" (MacAndrew & Edgerton, 1969, p. 14).

While both the individual and the public appear to be aware of the diversity of reactions to alcohol between people, as well as within a single individual, there must exist a heightened sense of awareness on the part of the bar staff if potentially dangerous situations are going to be minimized or eliminated. The courts have bestowed upon the licensed establishment a duty of care for their patrons. They have also stated that positive steps must be taken by the bar staff in dealing with their customers, if they are to meet the standard of care that the courts require. This translates into the bar staff being aware of an array of circumstances that are coexisting in the bar. They need to maintain vigilant observation regarding the amount of alcohol that an individual is consuming, as well as how the person is reacting to this consumption. It also requires that a watchful eye observes the interaction between people in the bar, as well as physical obstacles, that may present a concern regarding the patron's safety. Finally, and most importantly, the bar staff must actively intervene on behalf of the customers' safety to remove any hazardous obstacles. These obstacles may include: removing access to any more alcohol, supplying adequate lighting, cleaning up broken glass, mopping up spills on the floor, ensuring a safe

means of transportation home and even the physical removal of a patron whose actions may harm another customer. Regardless of the obstacles' forms, intervention by the staff is required to ensure the customers' safety.

IV: Controlling Disruptive Conduct: Bar Staff and the Legitimate Use of Force

The G.L.A. and G.L.R. bestow upon licensed establishments certain requirements which relate to the orderly and safe operations of the premises. They impose restrictions (discussed below) upon activities within the bars which may require the staff to intercede to prevent or stop the activities from occurring. Situations may arise wherein it becomes necessary for the bar staff to intervene, using physical force while performing their duties, which include maintaining a controlled and safe environment within the establishment. This is a difficult task because under the influence of alcohol a person's demeanor and conduct can undergo a variety of changes.

> Relative to our comportment when sober, we may for instance, become boisterous or solemn, depressed or euphoric, repugnantly gregarious or totally withdrawn, vicious or saintly, ready at last to say our say or stoically noncommittal, energetic or lackadaisical, amourous or hostile, ... but the list could be continued for pages (MacAndrew & Edgerton, 1969, p. 14).

In addition to the altered states of behavior there are also the factors of lessened inhibitions, clouded judgment, and physical impairments. The potential for intervention by bar staff to maintain an orderly and safe premises would likely increase with these factors. As unfortunate as it may be, occasions do arise where, in an effort to protect property and persons, force may be necessary to facilitate a return to order. In performing their duties as employees, the staff are empowered by the owner or licensee to protect their property. The following discussion will begin with an overview of the G.L.A. and G.L.R. requirements imposed upon a bar regarding its orderly operation. It will then investigate and discuss the legal issues surrounding the use of force by bar staff.

Maintaining An Orderly and Safe Premises: G.L.A. and G.L.R. Requirements

The G.L.A. and G.L.R. sections, relevant to operating a safe and orderly premises, will be presented within a framework of incidents that may result in employees resorting to force in an effort to uphold regulations.

Incident 1: Use of Force to Prevent Entrance to the Bar

Intervention, in which force may be necessary, may begin at the front doors of a bar. As was previously discussed, G.L.A. s. 71 requires that a bar refuse minors entrance to the licensed premises. G.L.A. s. 71(5) specifically states:

> If a person makes a request for identification under subsection (1) or (4) and the person who appears to be a minor fails to produce identification that is satisfactory to the person that is making the request, the liquor licensee must
> (a) not serve liquor to that person, and
> (b) refuse the person entry or ask the person to leave if the licence prohibits a minor from entering and being in those licensed premises.

Additionally, as a bar is private property, it can refuse entrance to anyone that it does not wish to have enter the establishment. Entrance to someone who is of legal drinking age is not a right, but a privilege granted them by the establishment. G.L.R. s. 91 states:

> No liquor licensee or employee or agent of a liquor licensee may
> (a) sell or provide liquor in the licensed premises to a person apparently intoxicated by liquor or a drug, or
> (b) permit a person apparently intoxicated by liquor or a drug to consume liquor in the licensed premises.

As an initial step in upholding this requirement, it is in the interest of the bar to deny entrance to anyone who arrives at the bar apparently intoxicated.

Although bar employees may have to resort to force to prevent access to someone arriving at the bar, the most common occurrence regarding entry to the bar involves a customer who has been previously ejected, or barred from entering, trying to regain entry. G.L.A. s. 67 states:

> No person may
> (a) remain in the licensed premises after having been requested to leave the premises by the liquor licensee or an employee or agent of the liquor licensee, or
> (b) enter licensed premises after having been forbidden to enter the premises by the liquor licensee or employee or agent of the liquor licensee.

A typical incident described to the author involved a patron who was asked to leave due to repeated customers' complaints of his stealing their drinks and generally being obnoxious and hassling them. After observing his behavior for a few minutes it was very apparent that the complaints were well-founded and he was escorted, without incident, out of the bar. Outside the bar he demanded to know why he was kicked out. Upon being informed that it was due to other customers' complaints as well as his observed unruly behavior, he demanded entry into the bar to confront his *accusers*. When he was told that he could not re-enter he attempted to push by the staff. It became necessary for the staff to use force to prevent him from entering the bar and they restrained him by employing an arm hold. Fortunately, the man settled down and, although annoyed, left quietly without further incident.

Despite occasions arising which require the licensee's employees to use force to prevent a person from entering the bar, the most frequent circumstances that demand

physical intervention occur inside the bar. G.L.A. s. 66(1) outlines the activities that a licensed establishment must prevent from occurring with the premises:

> No liquor licensee or employee or agent of a liquor licensee may permit any activity in the licensed premises that
> (a) is unlawful,
> (b) is detrimental to the orderly operation of the premises,
> (c) may be injurious to the health or safety of the people in the premises, or
> (d) is prohibited under the licence.

While many scenarios exist where the use of force may be necessary to control conduct which occurs in a licensed premises, two of the most frequent circumstances will be presented.

Incident 2: Use of Force to Eject Disorderly Patrons

This incident, described to the author, involved the staff having to intervene in removing an intoxicated individual who had obtained more alcohol after being *cut off* (refused service). The law does not require that an intoxicated individual be removed from the bar solely due to their intoxicated condition. However, G.L.R. s. 91(b) (see Appendix B) prohibits an employee from permitting an intoxicated person from consuming alcohol in the licensed premises. The patron may be allowed to remain on the premises, but is prohibited from further consumption of alcohol. G.L.A. s. 66(2) outlines prohibited behavior of patrons:

> No person may do anything in the licensed premises that
> (a) is detrimental to the orderly operation of the premises,
> (b) may be injurious to the health and safety of the people in the premises, or
> (c) is prohibited under the licence or by the regulations.

When patrons are cut off, it is general practice for all the servers to be informed, in order to prevent the patron from obtaining additional alcohol. In this case, after being cut off, another customer purchased a drink for the individual. The friends of the patron, who were present when he was cut off, had been informed that he could not have any more drinks and that if they provided him with further alcohol, they would all have to leave. Nevertheless, one of them did purchase a drink for him and, in doing so, violated G.L.A. s. 66(2b). As a result of their actions, after being warned, they were told to leave the bar. Upon being told they must leave, two individuals refused to do so and threatened the staff with violence. At this time, they had also violated G.L.A. s. 67(a) (see Appendix B) which states that no one can remain in a licensed premises when they have been requested to leave. Further discussions with the patrons were not successful in convincing them to exit the premises. At this time one of the doormen placed his hand on one of the patron's shoulders and said that he had to leave *right then*. The patron pushed the doorman's hand away and shoved the doorman. The other doorman present grabbed the patron, restrained him, and ushered him out the back door. The remaining friends of the ejected customer did not interfere and left the bar without any further incident.

Incident 3: Use of Force to Stop Physical Altercations

A final example that demonstrates how the bar staff may have to apply force in upholding the requirements of the G.L.A. and G.L.R. involves circumstances where customers of the bar are involved in physical altercations. Breaking up a fight usually requires the staff to use force due to the nature of the situation. In preventing or stopping

the altercation, the employees are performing their required duty under s. 66(1) (see Appendix B). Reasonable force should be used immediately to separate the individuals who are fighting and restrain them from continuing the fight. In discussions with a number of bar owners, managers and staff, all agree that a general principle of ejecting the combatants to reduce the risk of any further altercations is the best policy.

An example made available to the author involved the staff having to intercede in a fight which began initially with two patrons and quickly escalated to include two additional customers. The staff had to physically separate the four individuals who were involved in the fight. They restrained the combatants and then escorted two out one exit and two out another exit, in order to prevent the two groups from continuing the fight as soon as they were released outside the bar. While two of the patrons did not resist the doormen's efforts to remove them from the bar, the other two proceeded to struggle with and attempt to fight the doormen escorting them out. One doorman was shoved and then punched. He then punched the patron in an effort to defend himself. By this time the other doormen arrived at the scene and together they restrained both individuals. Apparently, realizing that further actions on their part would be futile because they were outnumbered six to two, the two individuals left the vicinity and did not return.

The incidents presented above provide examples of situations which escalated to the degree that force was required by the employees. However, not all circumstances which require the bar staff to intercede in order to maintain an orderly and safe environment in the bar call for the use of force. Further, it must be stressed that the use of force should

only be applied when all other methods of resolving the situation have been exhausted. If physical intervention is not necessary to control a situation, it should not be used.

Stotschek and Smith (1997) state that diffusing a disturbance or fight in a bar should begin with separating the individuals and controlled verbal skills (pp. 2 - 3). Although the initial act of separating the individuals may require some physical intervention by the staff, the employees should identify themselves and use calm and controlled verbal skills to diffuse the situation. Stotschek and Smith (1997) also note that employees should use back-ups available to them, such as other staff members and the police. There is strength and safety in numbers. As was observed in Incident 3 above, the situation, although initially requiring force, was diffused when the ejected patrons were outnumbered by the staff attending to the situation. Further, the police can be called in to assist the employees in handling difficult situations.

When other avenues of control are exhausted, the bar staff may be required to use force. However, when force is used in circumstances which do not necessitate its use, an individual may be held liable and face a possible civil suit and/or criminal charges.

Defenses for the Use of Force in the Canadian Criminal Code

Under certain circumstances, the use of force is legally justifiable under the Canadian Criminal Code (hereafter referred to as the Code). The source for all the Code sections is Martin's Annual Criminal Code 1997. Actions, which if performed under other circumstances would be considered criminal violations, can be legally defensible if they meet the criteria outlined in the appropriate section of the Code. This section will present

the Code defenses which bar staff may present in the event that they are criminally charged for force used in performing their duties.

Defense 1: Defense of House or Real Property

One defense that the bar staff may invoke to justify their use of force while performing their duties is the defense of house or real property. As was described in the incidents outlined above, force may become necessary to remove a disorderly patron from the establishment or to prevent a person from entering the premises. One required element of this defense is that the person to whom force is applied is deemed a trespasser. The second requirement necessary for this defense is that no more force than is necessary to remove the individual is used. The other elements that are required are that the individuals charged with regard to their use of force be in possession of the property and that the possession is peaceable. "If the jury is convinced beyond any reasonable doubt that any one element is missing, the defense must fail"(Mewett & Manning, 1994, p. 592).

> s. 41(1) Every one who is in peaceable possession of a dwelling-house or real property, and every one who is lawfully assisting him or acting under his authority, is justified in using force to prevent any person from trespassing on the dwelling-house or real property, or to remove a trespasser therefrom, if he uses no more force than is reasonably necessary.
> (2) A trespasser who resists an attempt by a person who is in peaceable possession of a dwelling-house or real property, or a person lawfully assisting him or acting under his authority to prevent his entry or to remove him, shall be deemed to commit an assault without justification or provocation. R.S., c. C - 34, s. 41.

In *Regina* v. *Paquin* (1983), Paquin was charged with assault causing bodily harm under s. 245(2b) of the Code resulting from him removing a patron from the bar that he

was employed at. "At approximately 1:00 a.m. or shortly thereafter, the manager formally demanded that they [Mr. Santo and his friend] leave the premises. They did not move and he directed Mr. Paquin to remove them from the premises" (*Regina* v. *Paquin*, 1983, p. 79). Santo's friend was removed from his chair and escorted to the door without incident. Unlike his friend, Santo did not want to leave and had to be dragged to the door. He then tried to get back in to look for his keys without success. Santo continued to struggle and, "Mr. Paquin started to push him out of the door when Santo spun around as if to throw a punch and Mr. Paquin hit him on the side of the face. Mr. Santo spun around, stumbled and left the premises. The force of the blow broke his jaw" (*Regina* v. *Paquin*, 1983, p. 79). In the commentary on the case, Judge Vancise states,

> It is unfortunate that Mr. Paquin broke Mr. Santo's jaw but he was entitled to forcefully remove Mr. Santo from the premises and his response to Mr. Santo's attempt to strike him was not, in my opinion, unreasonable" (Regina v. Paquin, 1983, p. 80).

Paquin was successful in employing the defense of house or real property and was acquitted of the charges. In the original case heard in the lower court, the Provincial Court judge did not allow Paquin to use the criminal defense under s. 41(1) as Paquin was not the owner of the property. It is on this basis that Paquin appealed. Judge Vancise stated that this defense was available to Paquin as, in accordance with s. 41, he was *lawfully assisting* the manager.

In a similar case, the defendant, Frost, appealed his conviction of aggravated assault as he was not permitted to use the defense provided under Code s. 37 preventing assault.

> s. 37(1) Every one is justified in using force to defend himself or any one under his protection from assault. If he uses no more force than is necessary

to prevent the assault or the repetition of it.

The accused, Frost, and his brother entered a premises from which they had previously been barred. They became involved in an altercation and the manager attempted to remove Frost's brother. Payne, while assisting the manager to remove Frost's brother, became involved with Frost and was injured as a result of Frost's actions. "The appellant argues that Payne's actions toward his brother was an assault, and he was entitled to take the action he did, protected by s. 37" (*R.* v. *Frost*, 1983, p. 159). County Court Judge Kennedy upheld the conviction of the lower court as the actions of Payne towards the defendant's brother were not "... the type which would involve the protection of s. 37" (*R.* v. *Frost*, 1983, p. 160). Payne was legally assisting the manager and therefore his actions were not considered criminal assault. Without Payne's actions being assault, Frost's defense in accordance with s. 37 is not applicable. This case demonstrates how s. 41(1) can be used to justify the use of force in such a way that it can legally protect persons from repercussions of that use of force. Payne had fulfilled the four elements, outlined above, that the use of this defense requires. He was lawfully assisting the owner of the property. The possession of the property was peaceable. The victim of the assault was deemed a trespasser. Finally, the judge determined that the force used was not more than was required by the circumstance.

One other issue relating to the defense of house or real property requires attention. In a licensed premises, the establishment enters into an invitor - invitee relationship with the patrons (*Jordan House Ltd.* v. *Menow*, 1973, p. 111). Through this relationship, the patron is not a trespasser once he have been granted permission to enter the bar but rather,

an invitee. Under s. 41(1), however, this defense is applicable to "remove a trespasser therefrom". As was stated above, one of the four required elements is that the victim is a trespasser. In *Regina* v. *Antley* (1964), Judge of Appeal Roach stated, "when he refused to leave the premises after having been requested to do so, he became a trespasser" (p. 145). Once the individual is determined to be a trespasser, the bar staff then have the right to use reasonable force to remove the patron, or prevent someone from entering the bar, and the defense of defense of house or real property is available to them.

Defense 2: Defense of Self-Defense Against Unprovoked Assault

The use of force by bar employees to eject a patron who is involved in disorderly conduct raises another issue. One of the key elements of the defense of self-defense with regard to bar staff use of force is written into the defense of house or real property under s. 41(2) discussed above. A customer who resists an attempt to be removed from the premises becomes a trespasser and is deemed to have committed an unprovoked assault. If the trespasser's actions are towards an employee, they may be able to further invoke the defense of self-defense against an unprovoked assault. The defense of self-defense has two sections. The first section establishes the guidelines for using force in defending oneself from an unprovoked assault where the result of the force is not intended to cause grievous bodily harm or death. "If the accused does not cause death or grievous bodily harm, therefore, the yardstick that is applied is whether the force is no more than is necessary to defend himself"(Mewett & Manning, 1994, p. 572). The second section discusses the defense when the result of the force is grievous bodily harm or death. The

force used may still be justified if two conditions are met. There must exist a reasonable fear that they themselves will be killed or incur grievous bodily harm and that there is no other means for them to escape the threat that they are facing. As in the first section, the force used must be no more than is reasonably necessary.

> s. 34(1) Everyone who is unlawfully assaulted without having provoked the assault is justified in repelling force by force if the force he uses is not intended to cause death or grievous bodily harm and is no more than is necessary to enable him to defend himself.
> (2) Everyone who is unlawfully assaulted and who causes death or grievous bodily harm in repelling the assault is justified if
> (a) he causes it under reasonable apprehension of death or grievous bodily harm from the violence which the assault was originally made or with which the assailant presumes his purposes; and
> (b) he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm. R.S., c. C-34, s. 34.

A key term in the defense of self- defense is the use of the word *reasonable*. In the previous chapter on civil liability, discourse concerning the reasonable person was presented by Lord Reid in *Bolton and Others* v. *Stone* (1951). "I think that reasonable men do, in fact, take into account the degree of risk and do not act on a bare possibility as they would if the risk were more substantial" (p. 865). Judge of Appeal Martin in *Regina* v. *Baxter* (1975) provides a discourse regarding the concept of what is reasonable, when considering the use of the defense of self-defense. In *R.* v. *Baxter* (1975) Baxter was charged with attempted murder and subsequently convicted of the lesser charge of discharging a firearm with intent to wound. Baxter appealed the decision on a number of grounds. Two of those grounds included the trial judge's misdirection regarding Baxter's use of the defense of self-defense.

> That there was non-direction and misdirection with respect to the defence of self- defence in that:
> (i) The learned trial judge erred in instructing the jury that, with respect to the issue of self - defence, the jury should apply an objective standard as to what a reasonable man would do in the circumstances, whereas the accused is subjective, namely, whether the accused believed on reasonable grounds that he was in imminent danger of death or serious injury and that he could not otherwise preserve himself from death or grievous bodily harm, since self - defence is available as a defence where the accused acts under a reasonable mistake of fact (p. 104).

The second ground for appeal that involved the defense of self-defense was that only s. 34(2) was made available to the jury by the trial judge's direction. It appeared that the infliction of grievous bodily harm with intent precluded the use of the defense under s. 34(1).

In discussing these concerns, Judge of Appeal Martin stated that in the first issue the trial judge's directions were appropriate. The trial judge's direction for an objective test were appropriate as the judge did not say that the issue tested was objective. The trial judge directed the jury to make an objective decision, but of a subjective matter. "What a reasonable man would believe or do in the circumstances was, accordingly, a relevant consideration in deciding whether the accused's subjective belief was based on reasonable grounds" (*R.* v. *Baxter*, 1975, p. 109).

In discussing the second issue of appeal, Judge of Appeal Martin stated, "I am not of the view, however, that s. 34(1) and (2) are mutually exclusive, and that s. 34(1) is not automatically excluded where death or grievous bodily harm has resulted" (*R.* v. *Baxter*, 1975, p. 109). Although s. 34(1) is to be deemed invalid if the accused intended to inflict bodily harm or death being the result, "if a person doing a lawful act accidentally kills or

causes grievous bodily harm which is caused by misadventure or accident and no criminal liability is incurred"(*R.* v. *Baxter*, 1975, p. 110).

These two factors are of great importance in using the defense of self-defense against unprovoked assault. The actions of the accused are judged on their subjective reasonable belief of the degree of the force or threat that they may face. Even if they are mistaken as to the real or true degree of the threat, if they believe it to be present they are justified in using the force necessary to repel it. Additionally, s. 34(1) or (2) may be invoked depending on the intent of the accused. Regardless of the actual consequences of the action the intent, or lack thereof, will determine which section will be applied. Baxter's appeal was allowed in part.

Regina v. *Marky* (1976) involved a manager of a restaurant appealing his conviction of assault causing bodily harm. Marky, while attempting to remove a disorderly patron from the bar, was attacked by a female companion of the disorderly patron. She attempted to kick Marky in the groin while he was involved in an altercation with her husband. Marky grabbed a glass jug on the bar beside him and struck her in the face. This action resulted in a cut to the woman's face which required 176 stitches. The appeal was launched on the basis that the provincial Judge took undue considerations regarding the size of the accused in respect to the female victim. As a result, the Judge found that the use of force applied by Marky was excessive, and therefore, criminally liable.

Court Judge of Appeal McGillivray disagreed with the provincial Judge's interpretation of s. 34.

> While it is clear from his discussion with counsel that the learned provincial judge recognized the principle that when one has to use force to protect himself, he is not expected to weigh the degree of such force to a nicety, yet he does not appear to have considered the principle in relation to the facts as the appellant might reasonably view them (*R.* v. *Marky*, 1976, p. 393).

Further, McGillivray stated that despite the appearance of the accused being such that it should have inhibited the female, it is quite obvious that it did not, thereby making this factor irrelevant. " . . . [It] seems to me that here the learned provincial judge was going by results, as distinct from looking at the situation from the point of view of the appellant" (*R.* v. *Marky*, 1976, p. 393).

Although it was not presented as a defense in the original trial, the Court Judge of Appeal McGillivray commented that, as the manager of the premises, Marky was justified in using force against the man in an effort to remove him. In adding this defense, the male patron had assaulted Marky who was lawfully removing him from the premises. This provides him legal protection from the assault by the wife. The woman's actions would thereby become an unprovoked assault and Marky was legally justified in defending himself. Regardless of Marky's size the provincial judge, " . . . has not given due consideration to what a kick in the genitals might have done to him" (*R.* v. *Marky*, 1976, p. 395). The belief that Marky had reasonable apprehension for his own safety was provided support by the testimony of the female patron herself, "she intended to hurt him" (*R.* v. *Marky*, 1976, p. 393). As a result of the considerations of these arguments, the conviction was quashed and a new trial was ordered.

This case demonstrates how the defense of self-defense can be applied by bar staff to protect them from criminal liability for their use of force in appropriate circumstances. Further, it shows that the size of the staff member, while it may be considered in the trial, is not a deciding factor as to whether they have reasonable apprehension of grievous bodily harm or death. Rather, it is their reasonable belief that they must act as they did in order to protect themselves. This consideration is of major significance to bar employees. Generally, the doormen employed at a bar are very large in stature. As was mentioned by Judge Vancise, "Mr. Paquin was well suited for this work in that he weighed some 300 pounds" (*R.* v. *Paquin*, 1983, p. 79). Although size may not be the only consideration in hiring a doorman, it is an asset.

Another factor which is written directly into the Code in the discussed sections is that the individual invoking these defenses is required to use no more force than is necessary. This component was also directly involved in the case just mentioned. The discussion which follows will provide the definition of *excessive force* in the Code as well as present two cases where this issue was an integral element.

Criminal Liability for the Excessive Use of Force

The two defenses discussed above provide the bar staff with legal justification for the use of force. The use of the language "reasonably necessary" in the Code provides the boundaries of the degree of force that may be used. The presence of legal defenses for using force does not permit wanton, vigilante justice. Section 26 of the Code discusses the extent of force that is permitted and outlines the consequences of exceeding that limit.

> s. 26 Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess. R.S., c. C-34, s. 26.

A person who is determined to have used force that was more than reasonably necessary under the circumstances surrounding the use of force is criminally liable and may face criminal charges that correspond to the act or acts that were deemed excessive.

The first example presented involves a doorman who was charged with manslaughter after an altercation at the bar where he worked. Palmer, one of the bouncers involved in the scuffle, was charged with manslaughter and if convicted could face a maximum penalty of life imprisonment in accordance with s. 236(b) of the Code.

> s. 236 Every person who commits manslaughter is guilty of an indictable offense and liable
> (b) in any other case, to imprisonment for life. R.S., c. C-34, s. 219; 1995, c. 39, s. 142.

Palmer, in an attempt to control the disorderly and much larger Kleinschmidt, administered a chokehold on the man, taking him to the floor. "Bouncers appeared to have Kleinschmidt under control, Stanton (a witness at the trial) said, when head bartender Dale Grinde suddenly appeared and repeatedly banged Kleinschmidt's head to the ground" (The Calgary Herald, June 21, 1996, p. B-02). Judge Phillips noted that the neck injuries which resulted in Kleinschmidt's death were likely due to the actions of Grinde, rather that the choke hold applied by Palmer; subsequently Palmer was acquitted (The Calgary Herald, June 21, 1996, p. B - 02). In this example, despite the tragic results, the use of force by the bouncer was not deemed excessive. It was not more than was reasonably necessary under the circumstance.

In *Regina* v. *Murphy* (1976) the accused, Murphy, a bartender at a tavern, approached a table of three men to request that the one man, Boland, who had been barred from the tavern, leave the premises. The man had been permitted to enter the tavern to use the washroom, but was told he must leave immediately afterwards. The bartender returned to his duties and a few minutes later noticed the man sitting with two others drinking a beer. Murphy approached the table to find out who purchased the beer and to request that Boland leave the premises. In accordance with club policy, anyone who purchased alcohol for the barred patron was also required to leave the premises.

Murphy reminded Boland that he was barred and attempted to remove his beer from the table. At this point Sweetapple, who had purchased the beer for Boland, became belligerent stating that it was his money and he could buy a beer for anyone he liked. Murphy then informed Sweetapple and his son that they were also barred and would have to leave the tavern. The accused again reached for the bottle of beer and was grabbed by his shirt collar by Sweetapple who tried to punch him, but missed. Murphy responded by punching Sweetapple in the face with enough force to knock him to the floor.

According to Murphy, Sweetapple, a man of seventy-three, got up and attempted to punch Murphy a second time. Murphy blocked the punch and hit Sweetapple again, knocking him to the floor. On this occasion, Murphy lost his balance and fell, knocking over the table resulting in all four men ending up on the floor. Sweetapple senior was then taken to the washroom by his son to clean up. While in the washroom, he collapsed to the floor. He was taken to the hospital where he was pronounced dead on arrival.

"As to the cause of death Doctor Markesteyn [the Provincial Forensic Pathologist] testified that it occurred as a result of the stopping of the heart following an alleged fight but due to natural diseases or causes" (*R.* v. *Murphy*, 1976, p. 498). As a result of these findings, and the District Court Judge's opinion that Murphy was not aware of the victim's condition, he was charged with assault causing bodily harm in connection with the punches he threw and the facial damage sustained by Sweetapple.

Murphy invoked the defense of self-defense. District Court Judge Steele also discussed the defense of house or real property. In his discourses on the altercation, he separated the incident into two distinct stages. The first punch thrown by Murphy and the second punch thrown by Murphy.

In regard to the first punch, District Court Judge Steele stated "that in striking out at Sweetapple senior, hitting him in the face, he was acting from the instinct of self preservation" (*R.* v. *Murphy*, 1976, p. 507). His actions were a result of Sweetapple grabbing him and attempting to punch him. District Court Judge Steele accepted the defense of self-defense for Murphy's action of throwing the first punch. Murphy was denied the justification of self-defense under s. 34 of the Code for the second punch he threw at Sweetapple because:

> On the evidence before me I find that I cannot agree with Counsel for the accused that the second punch thrown by the accused was with no more force than was necessary to defend himself. Further, on the facts I am unable to accept the proposition that the second punch was executed under reasonable apprehension of grievous bodily harm nor do I accept that at that point the accused believed on reasonable and probable grounds or in fact at all that he could not otherwise preserve himself from grievous bodily harm (*R.* v. *Murphy*, 1976, p. 508).

The statements of the Judge show that while the first punch was a reasonable action to defend Murphy, the second punch was deemed excessive use of force. Due to Boland and Sweetapple Junior not becoming involved at any time, and Sweetapple Senior not even coming close to hitting Murphy, there was no evidence of a threat facing Murphy when he punched Sweetapple Senior a second time. At that point, "the real dilemma was how to restrain Hubert Sweetapple and not what he [Murphy] must do next to protect himself" (*R.* v. *Murphy*, 1976, p. 509).

Until the point was reached that Murphy threw the second punch, he was performing his duties as an employee of the bar quite properly. The first punch was justifiable under s. 34 of the Code in repelling force with force to protect himself. When the second punch was thrown, however, Murphy went beyond the requirements of his duty and the need to defend himself and used excessive force. Murphy was convicted as a result of the excessive force and was sentenced to probation for one year and a fine of $100.00.

This final area of investigation discussed the issue of bar staff using force in order to achieve the legally expected controlled and safe environment in the licensed premises. Two possible defenses were discussed which may provide the employees with legal protection when circumstances exist which necessitate the use of force. Despite the availability of these defenses, bar staff are not immune from criminal liability. Although force may be required to perform their duties as employees for a licensed premises or to protect themselves from harm; any excess of force used is deemed criminal and the bar staff may be found liable in criminal proceedings.

The statements of District Court Judge Steele at the sentencing of Murphy summarize this section very well.

> Bartenders [all bar staff] in taverns, like a policeman must daily face verbal abuse and perhaps bartenders more so since their customers are frequently under the influence of alcohol. The abuse is inherent in the very nature of the occupation. It is not an easy job. The bartenders must deal with unruly customers who are intoxicated to some degree and sometimes quite obnoxious. On the other hand, the owners of such clubs and the bartenders they employ must handle awkward situations with as much restraint as possible. After all the customer is an invitee and the purpose is to sell the customer alcoholic beverages. It is quite foreseeable that a certain percentage of customers will become intoxicated to an extent and behave in a belligerent manner. In such a situation I feel that there is a duty on the bartender to exercise the greatest restraint, with force being the final resort. (*R.* v. *Murphy*, 1976, pp. 514 - 515, brackets added by author).

Conclusion

This thesis has discussed the legal issues that developed out of societal concerns regarding alcohol in Alberta, Canada. It began with a brief look at the history of alcohol legislation in Alberta. The end of an eight-year experiment with prohibition in 1924 saw the beginning of a new era: government control over alcohol. Many of the issues and concerns present when the government initially assumed control of alcohol continue today.

The current G.L.A. and G.L.R. continue to reflect concerns that the Province has regarding alcohol. Government control of alcohol exists in 1997 in a similar manner as it did in 1924. Today the Alberta Gaming and Liquor Control Board continues the work initially performed by the Board in 1924. They inspect licensed premises to ensure that the licensee and their employees are adhering to the laws governing liquor. Violations are reported and sanctions levied against those who do not comply with the government legislation.

In the past two decades a new legal issue, civil liability of alcohol providers, has evolved with respect to alcohol. The G.L.A. and O.L.A. legislate the responsibilities and requirements bestowed on licensed premises to maintain a safe and orderly environment in the bar. These responsibilities and requirements have endowed a legal duty of care on the bar for the safety of their customers. The G.L.A., as it relates specifically to the providing of alcohol, further extends the responsibilities and liability of a licensed premises. As alcohol providers, the licensed premises are a duty of care to the customers who are consuming alcohol. Further, the duty of care is extended to those who may have harm befall them as a result of an intoxicated patron's actions.

In *Mayfield Investments Ltd.* v. *Stewart* (1995) a civil lawsuit against the alcohol provider, the Mayfield Inn, was heard by the Supreme Court of Canada. In the trial court, Judge Agrias found that the Mayfield Inn was not liable for injuries received by Stewart as Pettie did not display any visible signs of intoxication and was in the company of two sober individuals who were aware of the circumstances and permitted Pettie to drive. Nonetheless the judge awarded Stewart a provisional 10% against the Mayfield Inn. On appeal, Judge of Appeal Kerans upheld the 10% claim against the Mayfield Inn, stating that the Mayfield Inn had breached two duties of care: serving Pettie past the point of intoxication and not taking any positive steps to ensure he did not drive. This case was then appealed to the Supreme Court. There, Justice Major stated that the risk to a third party as a result of an impaired patron driving exists and is foreseeable.

Justice Major concluded that the real question, however, was not whether the duty of care was breached, but rather a question of whether the conduct necessary to meet the standard of care was breached. Justice Major concluded that the Mayfield Inn was relieved of their duty by the presence of the two sober individuals who could assure the safe passage home of the intoxicated patron, Pettie, and eliminate the risk to third parties who may be harmed as a result of Pettie driving while intoxicated.

The existence of civil liability imposed upon alcohol providers places the licensees and their employees in a tenuous position. The very nature of the business, and the economic livelihood of the owners and staff, relies on the selling of alcohol to their customers. At the same time they are given a legal mandate not to serve patrons past the point of intoxication. The legal mandate is additionally supported by the fear of civil

litigation and the potential for huge monetary claims against the licensees and their staff. Further complicating the licensed premises position in these matters is the desire of the patrons to consume liquor for the purposes of feeling the effects of intoxication that alcohol provides.

"We all know, for instance, that the relative carefreeness of the cocktail party is often due in no small measure to the effects of the cocktails themselves" (MacAndrew & Edgerton, 1969, p. 3). In an attempt to attain the carefree feelings that alcohol may provide, some level of intoxication is required. The customer who is desirous of this feeling must purchase the alcohol from the bar. The licensees and their employees have a legal obligation, however, not to serve the patrons to the point of intoxication. In preventing a patron from attaining the desired state of intoxication, there is a great risk of losing that patron as a customer in the future. This has been observed by the author while working in the bar industry. A customer who is cut off at one bar will often leave in search of another establishment where they can consume more alcohol.

Another concern regarding the service of intoxicated customers was mentioned in *Mayfield Investments Ltd.* v. *Stewart* (1995). Judge Agrias in the trial court did not hold the Mayfield Inn liable as Pettie did not display visible signs of intoxication. The higher courts disagreed with this decision. Judge Kearns of the Alberta Court of Appeal stated that the bar should have been aware of Pettie's intoxicated condition based on how much alcohol he had been served. Supreme Court Justice Major concurred with this decision. This case, however, did not make it clear what would occur under conditions in a bar where the customer may obtain alcohol from any number of servers without running a

comprehensive tab listing all the drinks purchased by the customer. One may draw the conclusion, that under these circumstances, the opinion held by Judge Agrias of the lower court would be upheld. This issue nevertheless remains to be decided by the courts.

The problem facing the alcohol providers in determining whether or not a customer is intoxicated is compounded by the observation that alcohol can affect people differently. In *Mayfield Investments Ltd.* v. *Stewart* (1995) Pettie, though exceeding the legal limit of concentration of alcohol present in the blood, did not display visible signs of intoxication. If the alcohol providers are prohibited from serving an apparently intoxicated customer in accordance with G.L.R.S. (91), they may find themselves in the very difficult situation of having to rely on visible signs of intoxication in order to determine when to refuse further service of alcohol, while having the knowledge that each individual may vary in their responses to alcohol.

Regardless of the issues discussed in regard to a customer's state of intoxication, Justice Major did provide an important guideline for alcohol providers. The licensees must demonstrate that they have taken positive steps to eliminate any reasonably foreseeable risk. There are many avenues available to bar staff in trying to ensure the safe transport of the intoxicated patron home. There are many taxi companies who can be called to assist the patron in getting home. A bar can establish and promote a designated driver program, wherein a member of a group of patrons can receive free non-alcoholic beverages from the bar, in exchange for assuming the responsibility of getting the other members of the group home. Finally, there is still the option of refusing service of alcoholic drinks to anyone who appears to be intoxicated.

In attempting to maintain a safe and orderly premises and avoid civil litigation resulting when harm befalls a customer using the premises, bar staff may have to resort to the use of force. The Canadian Criminal Code provides legal justification for using force, but it is limited to what is determined to be reasonably necessary in each situation.

The cases presented above demonstrated how situations develop that necessitate the use of force. They also provided discussion and examples of two legal defenses that may be used to justify the use of force. *R.* v. *Murphy* (1976) provides an example of how an employee of a licensed premises may be held criminally liable for the use of force in controlling a disorderly patron. The case discusses an altercation between a bartender and a unruly patron, with the patron being punched in the face twice by the bartender. District Court Judge Steele accepted the bartender's use of the defense of self-defense in regard to the first punch. The second punch however was considered to be excessive under the prevailing circumstances and the bartender was convicted of assault causing bodily harm.

The general consensus that appears to exist in the cases presented was that the use of force by bar staff was expected to be the last resort in controlling disruptive and disorderly conduct in the bar. The concluding statement by District Court Judge Steele in *R.* v. *Murphy* (1976) recognizes that the very nature of the business of providing alcohol to customers increases the chances of employees having to deal with belligerent people. Regardless of this, the staff are expected to use the utmost restraint when controlling behavior in the bar. This appears to imply that anyone who seeks employment or is employed at a licensed premises has to accept that they will be faced with belligerent patrons and to maintain a calm and restrained demeanor when confronted by that

situation. Nevertheless, employees, in performing their duties or protecting themselves, do have legal defenses at their disposal for justifying any necessary force used.

The legal issues surrounding the environment of licensed premises center around alcohol. The effects that alcohol can have on a person's demeanor and conduct are many and varied. The bar industry involves the business of selling alcohol and the management of the people to whom alcohol is sold. The policies adopted by bars in regard to serving customers, controlling their conduct (both within the bar and after they leave) and protecting the customers, as well as anyone they may come in contact with, have to provide general policies that are flexible enough to encompass individual situations. The legal issues that licensed premises have to consider may begin as a set of informal controls within the bar, but may result in formal controls when they reach the police and courts.

The business of selling alcohol is an intricately woven web of formal and informal controls. It becomes increasingly more complex when additional individuals are added to the web. Only through discovering, understanding and discussing the liquor laws, related court cases and personal experiences, can licensees and their employees make an intricate web manageable. Upon arriving at this point, policies may be established to guide their activities in such a way as to provide a safe, orderly and yet desirable environment within the bar which will attract business but provide the licensee and their employees some degree of peace of mind in regard to legal concerns.

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Appendix A

The Government Liquor Control Act of Alberta of 1924 (G.L.C.A.A.)

Part I

s. 4: There shall be a Board known as the "Alberta Liquor Control Board" consisting of one, two or three members as may be determined from time to time by the Lieutenant Governor in Council, with the powers and duties herein specified, and the administration of this Act, including the general control, management and supervision of all Government Liquor Stores, shall be vested in such Board.

s. 6: The Lieutenant Governor in Council shall

(a) Appoint the member or members of the Board;

(b) Specify what number of members shall constitute a quorum of the Board;

(c) Fix the salaries of members of the Board.

s. 9: The Board shall have the following functions, duties and powers:

(a) To buy, import, and have in its possession for sale, and sell, liquors, in the manner set forth in this Act;

(d) To grant, refuse or cancel permits for the purchase of liquor;

(g) To appoint vendors, and also every officer, inspector, clerk or other employee, required for the operation or carrying out of this Act, and to dismiss the same, fix their salaries or remuneration, assign them their titles, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

(j) To grant and issue licenses under and in pursuance to this Act.

s. 10: The Board, with the approval of the Lieutenant Governor in Council, may make such regulations, not inconsistent with this Act, as to the Board seems necessary, for carrying out the provisions of this Act, and for the efficient administration thereof, and such regulations shall be published in the *The Alberta Gazette*, and upon being so published they shall have the same force as it they formed a part of this Act, and any such regulations may be repealed by the Board, subject to the like approval, and notice thereof shall be published in the Gazette.

Part II

s. 19: There shall be two classes of permits under this Act:

(a) Individual permits;

(b) Special permits.

Upon application in the prescribed form being made to the Board, or to any official authorized by the Board to issue permits, accompanied by payment of the prescribed fee, and upon the Board, or such official being satisfied that the applicant is entitled to a permit

for the purchase of liquor under this Act, the Board or such official shall issue to the applicant a permit of the class applied for, as follows:

(a)An "individual permit" in the prescribed form may be granted to an individual of the full age of twenty-one years, who had resided in the Province, for the period of at least one month immediately preceding the date of his making the application, and who is not disqualified under this Act, entitling the applicant to purchase liquor for beverage, medicinal or culinary purposes, in accordance with the terms and provisions of the permit, and the provisions of this Act, and the regulations made thereunder;

(b)An "individual permit" in the prescribed form may be granted to an individual of the full age of twenty-one years, who is temporarily a resident or sojourning in the Province, and who is not disqualified under this Act, entitling the applicant during a period not exceeding one month to purchase liquor for beverage, medicinal, or culinary purposes, in accordance with the terms and provisions of the permit, and the provisions of this Act and the regulations made thereunder;

(c)A "special permit" in the prescribed form may be granted to a druggists, physician, dentist, or veterinary, or to a person engaged within the Province in mechanical or manufacturing business, or in scientific pursuits, requiring liquor for use therein, entitling the applicant to purchase liquor for the purpose named in such "special permit", and in accordance with the terms and provisions of such "special permit" and in accordance with the provisions of this Act, and the regulations made thereunder;

(d) A "special permit" in the prescribed form may be granted to a minister of the Gospel, entitling the applicant to purchase wine for sacramental purposes on in accordance with the terms and provisions of such "special permit".

s. 29: Upon application in the prescribed form and accompanied by the prescribed fee, the Board may, in accordance with this Act and the regulations made thereunder, grant a club license in respect of any premises kept or operated by a club, and specified in the license, entitling the club to purchase beer from a vendor or brewer licensed to sell beer under this Act, and to keep on the premises such beer, and subject to the provisions of this Act and the regulations made thereunder to sell the same to members of the club for consumption on the club premises.

s. 30: Notwithstanding any provision of this Act, no liquor, other than beer, shall be kept or consumed by any person in any club.

s. 31: If authorized by the regulations, and in accordance therewith, the Board may grant a license in respect of a canteen, entitling the person in control of such canteen to purchase beer from a vendor, or from a brewer, licensed to sell beer under this Act, and to sell the same, by the glass or open bottle, for consumption on the premises, in accordance with such regulations and this Act, in camps, armouries and barracks, or the permanent and non-permanent units of the Canadian Militia and Royal Canadian Mounted Police, under direct military supervision and control.

s. 32: The Board may, in accordance with this Act and the regulations made thereunder, grant a beer license in respect of a hotel kept and operated by the licensee.

s. 33: No license to sell beer in respect of a hotel shall be issued or granted

(a) unless the hotel contains, in addition to what is required for the use of the licensee, his family and servants, sufficient bedrooms, with suitable complement of bedding and furniture, public sitting rooms, and other conveniences, reasonably suited to the requirements of the public likely to make use of the same;

(b) unless the hotel is provided with suitable privies, lavatories and toilets which shall at all times be kept clean and ventilated;

(c) unless the hotel and the part thereof where beer may be kept, sold and consumed under the beer license applied for, and constructed, equipped and conducted to the satisfaction of the Board, and constructed and equipped so as not the facilitate any breach of this Act or the regulations made thereunder, and the hotel premises have been approved of in writing by an inspector appointed or authorized by the Board to inspect the same;

(d) if the applicant is of bad fame and character or of drunken habits, or has been convicted within a period of three years immediately preceding the date of his application, of keeping, frequenting or being an inmate of a common bawdy house.

s. 34: Upon receipt of the application and fee and upon being satisfied of the truth of the statements in the application, and that the hotel is suitably constructed, equipped and conducted, and that the part of the hotel where it is proposed to keep, sell and consume beer under the license applied for, is suitable and satisfactory for the purpose, and in accordance with this Act and the regulations made thereunder, and that the applicant is a fit and proper person to be licensed, the Board may grant and issue to the applicant a license entitling him to purchase beer from a vendor or brewer licensed to sell beer under this Act, and, in that part of the hotel set out in the license, to sell by the glass or open bottle, the beer so purchased, to persons not disqualified under this Act, for consumption in that part of the hotel set out in the license and accordance with the terms and conditions of the license and the provisions of this Act and the regulations made thereunder.

s. 35: Unless sooner cancelled, every beer license issued by the Board, shall expire at midnight on the thirty-first day of December, in the year in respect of which the license is issued. In case the licensee applies for a new license for the following year in respect of the same premises, he shall not unless so required by the Board be required to give notice by advertisement of his intention to apply for a new license.

s. 36(1): Every beer license issued under this Act shall be subject to all conditions and restriction imposed by this Act and the regulations made thereunder in force from time to time.

(4): No person under the age of twenty-one years, nor any constable or police officer while on duty shall enter, be in, on or remain in or on the premises where beer is licensed to be kept, sold or consumed, and no licensee shall suffer or permit any person apparently, or to the knowledge of such licensee under the age of twenty-one years, or any constable

or police officer, while on duty (unless in the execution of the duties of such constable or police officer) to so enter, be in, on or remain, or suffer or permit any gambling, drunkenness or any violent, quarrelsome, riotous or disorderly conduct, to take place on such premises, or suffer or permit any persons of notoriously bad character to assemble or meet on such premises.

s. 37: No sale or other disposal of beer shall be made or take place in, on or from any part of a hotel in respect of which a beer license has been granted, no shall any part of such hotel be open for the sale of beer

> (a) from or after the hour of nine o'clock on Saturday night until seven o'clock on Monday morning thereafter, nor from and after the hour of ten o'clock at night until seven o'clock the following morning on the other days of the week.

Part IV

s. 88(1): Except in the case of liquor purchased and consumed in accordance with a beer license or a special permit for a purpose permitting its consumption in a public place, no person shall consume liquor in a public place.

(2) No person shall be in an intoxicated condition in a public place.

s. 90: Except in the case of liquor given to a person under the age of twenty-one years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply liquor to any person under the age of twenty-one years, or permit any person under that age to consume liquor.

s.107: Every person who knowingly violates any provision of sections 90 to 92 shall be liable, on summary conviction, for a first offence, to imprisonment, with hard labour, for not less than one month, nor more than three months, and for a second or subsequent offence, to imprisonment with hard labour for not less than four months, nor more than twelve.

Appendix B

Province of Alberta
GAMING AND LIQUOR ACT
Chapter G - 0.5, 1996

Part 3: Liquor

s. 47: No person may, except in accordance with this Act or in accordance with a liquor licence, manufacture, import, purchase, sell, transport, possess, store, use or consume liquor.

s. 65(1): No liquor licensee or employee or agent of a liquor licensee who authorizes the sale or provision of liquor at licensed premises may sell, offer to sell or provide liquor at the licensed premises

(a) unless the liquor was purchased from the Commission or acquired in accordance with board policies,

(b) except during the hours and on the days when the liquor may be sold or provided under the regulations or stadium bylaws.

(2): No liquor licensee or employee or agent of a liquor licensee may sell, offer to sell or provide from the licensed premises liquor to be consumed off the licensed premises unless the licensee's licence authorized those activities.

s. 66(1): No liquor licensee or employee or agent of a liquor licensee may permit an activity in the licensed premises that,

(a) is unlawful,

(b) is detrimental to the orderly operation of the premises,

(c) may be injurious to the health or safety of people in the premises, or

(d) is prohibited under the licence or by the regulations.

(2) No person may do anything in licensed premises that

(a) is detrimental to the orderly operation of the premises,

(b) may be injurious to the health and safety of the people in the premises, or

(c) is prohibited under the licence or by the regulations.

s. 68(3): No person may consume and no liquor licensee or employee or agent of a liquor licensee may permit a person to consume liquor on licensed premises when the sale and consumption of liquor in those premises are prohibited under the regulations or stadium bylaws.

s. 70(1): No liquor licensee or employee or agent of a liquor licensee or any other person may

(a) mix or permit to be mixed with any liquor that is in the possession of a liquor licensee any drug or any form of methyl alcohol or any crude, unrectified or impure form of ethyl alcohol or and other deleterious substance or liquid, or

(b) blend or permit to be blended one type or brand of liquor with another type or brand of liquor that is in the possession of a liquor licensee by

exchanging or combining except when using an automatic dispensing device approved by the Commission.

(2): No liquor licensee or employee or agent of a liquor licensee may add water or permit water to be added to any liquor sold or given to a customer so as to reduce the percentage of alcohol by volume without the knowledge and consent of the customer.

s. 72: No person may give or sell or permit any person to give or sell liquor to a minor in licensed premises.

s. 84(1): Subject to subsection (3) and section 85, no minor may

(a) purchase or attempt to purchase liquor;

(b) obtain or attempt to obtain liquor;

(c) possess or consume liquor.

(3): An adult who is the parent, guardian or spouse of a minor and who is in lawful possession of liquor may give the liquor to a minor in a residence or a temporary residence.

s. 85: A priest, clergyman, minister or other religious leader may, in the performance of religious ceremonies or sacraments, give liquor, approved by the Commission for sacramental purposes, to a minor or an adult in accordance with the practices of the religion.

Part 5: ENFORCEMENT; Inspections, Search and Seizure

s. 95(2): Every police officer as defined in the *Police Act* is an inspector for the purposes of this Act.

s. 96: No person may hinder, obstruct or impede an inspector in the performance of the inspector's duties or in the exercise of the inspector's powers.

s. 100(1): To ensure compliance with this Act an inspector may enter and inspect, at any reasonable time,

(a) licensed premises or facilities,

(b) premises with respect to which a liquor licence has been suspended or cancelled,

(c) a facility with respect to which a facility licence has been suspended or cancelled, or

(d) the offices of a common carrier doing business in Alberta that may contain records and documents relating to liquor stored or transported in Alberta.

(2): An inspector may enter and inspect, at any reasonable time, premises or facilities described in an application for a licence to determine if the premises or facilities meet the requirements of this Act.

(3): When acting under the authority of this section, an inspector must carry identification in the form established by the board and present it on request to the owner or occupant of the premises being inspected.

(4): In carrying out an inspection an inspector

(a) may, in an inspection relating to liquor,

(i) take reasonable samples of liquor for testing and analysis,

(ii) inspect, examine and make copies of records and documents relating to liquor or a licence or temporarily remove any of them to make copies, and
(iii) interview and request identification from people in the licensed premises who appear to be minors,

(5): When an inspector removes records and documents under subsection (4), the inspector must

(a) give to the person from whom they were taken a receipt for them, and
(b) within a reasonable time, return them to that person.

Province of Alberta
Gaming and Liquor Act
GAMING AND LIQUOR REGULATION
1996

Part 3: Liquor

Division 1: Liquor Licences

Class A Liquor Licences

s. 35: A Class A liquor licence authorizes the licensee

(a) to purchase liquor from the Commission or as otherwise directed by the board,
(b) to possess, store and use liquor in the licensed premises, and
(c) to sell or provide liquor from the licensed premises for consumption in the licensed premises.

Division 5: Miscellaneous

s. 91: No liquor licensee or employee or agent of a liquor licensee may

(a) sell or provide liquor in the licensed premises to a person apparently intoxicated by liquor or a drug, or
(b) permit a person apparently intoxicated by liquor or a drug to consume liquor in the licensed premises.

s. 92(1): Subject to any conditions affecting a licence, a Class A, B, C, D, duty free store or special event liquor licensee may provide or sell liquor in licensed premises only

(a) during the hours specified under Schedule 3, or
(b) if the board specifies hours under subsection (3), during those hours.

(2): No person may consume liquor in licensed premises under a Class A, B, C, or special event liquor licence unless the consumption occurs

(a) during the period that liquor may be sold and one hour after that period, or

(b) if the board specifies a period under subsection (3), during that period.

(3): The board may reduce or increase the hours that liquor may be sold, provided or consumed in licensed premises.

Schedule 3

Maximum Hours that Liquor may be Sold or Provided

Liquor Licence	Hours
1: Class A, B, or C liquor licence	
(a) for all licensed premises other than those specifically mentioned in this item	10: 00 a.m. - 2:00 a.m.
(b) convention centre, public conveyance, canteen, travellers' lounge	set by board
(c) race track	2 hours before post time until end of last race
(d) sports stadium that is subject to stadium bylaws	during the hours specified in the stadium bylaws
(e) sports stadium that is not subject to stadium bylaws	2 hours before start of event until end of event
(f) theatre	2 hours before opening curtain until final curtain

LICENSEE HANDBOOK
Alberta Liquor Control Board

General Information

s. 1.6(1): Licensees should be aware that a potential liability situation exists with the service of liquor. Court awards have increased considerably in the past ten years.

s. 1.6(2): A licensee and staff should:

(a) ensure service practices help detect an intoxicated individual;
(b) refuse liquor service to intoxicated patrons;
(c) prohibit activities that may cause personal injury;

(d) ensure premises are safe, considering that patrons are consuming an intoxicating substance and may be more likely to have accidents (for example, a low railing on a high staircase might be considered unsafe);
(e) try to ensure patrons proceed safely home, if patron intoxication occurs (for example, intoxicated individuals should not be exposed to harsh winter conditions for prolonged periods);
(f) implement a Designated Driver Program or other responsible alcohol use program to reduce impaired driving. (The Designated Driver Program, supported by the Justice Department and the ALCB, offers an opportunity for a group to identify one individual who will not drink alcoholic beverages. The individual will receive free non-alcoholic beverages and be responsible for driving the group home. Details of the program are available for ALCB Inspectors.);
(g) ensure the occupant load is not exceeded; and
(h) reduce risk of patron assault.

Customer Services

s. 5.1(12): A licensee will ensure staff demand proof of age when a person of questionable age (anyone who appears to be less that [sic] 25 years of age) attempts to enter a Class A (liquor primary) premises or to purchase liquor. Photograph identification is the required type of identification. Acceptable identification includes any one of the following:

(a) Alberta Operator's Licence (note: the plastic sealed part of the licence containing the photograph must be used as proof of age); or
(b) Motor Vehicles Division Identification Card or Alberta Registries Motor Vehicles Identification Card (this non-driver's identification is available through private registry offices); or
(c) passport, Armed Forces Identification Card, Certificate of Indian Status or Immigrant Authorization.

s. 5.1(13): In the event the required photographic identification appears not to be genuine, then a second piece of identification from the following list must be requested:

(a) Birth Certificate
(b) Social Insurance Card
(c) Citizenship Certificate
(d) Baptismal Certificate
(e) Foreign Government Visa
(g) Fire Arms Acquisition Certificate

s. 5.1(14): Careful examination of identification under adequate lighting must take place to ensure:

(a) the photograph is genuine and has not been substituted;
(b) the plastic envelope has not been tampered with; and

(c) the lettering that provides information on name and date of birth has not been altered.

s. 5.1(15): Where there is any doubt that identification is genuine, have the individual provide a sample signature and compare the signature on the photograph identification. Also, ask for a second piece of signature identification.

s. 5.1(16): Caution should also be exercised to check for identification each and every time a person of questionable age attempts to purchase liquor, including regular customers. On a previous occasion, false identification may have been produced and accepted.

s. 5.1(17): If a person of questionable age fails to satisfy the licensee or staff that the person is of legal age, the licensee will refuse entry if minors are not permitted in the licensed premises.

s. 5.1(18): If a young-looking person fails to satisfy the licensee of staff that the person is of legal age, the licensee will refuse to provide liquor service to the individual in question.

s. 5.1(19): Supervisory staff of licensed premises will remain constantly vigilant to ensure that adequate safeguards against minors are maintained.

s. 5.1(20): A licensee who employs minors as table staff will ensure that the minors do not become involved in the sale or service of liquor.

s. 5.1(21): Licensees shall provide adequate supervision to ensure patrons of legal age do not provide liquor to minors.

s. 5.1(22): A minor is prohibited from entering any licensed premises at a time when nude entertainment is being performed.

s. 5.1(23): Licensees should consider telephoning police when minors attempt to purchase liquor, are found consuming liquor or are found to be on Class A (liquor primary) premises. Police may elect to lay charges.

Inspectors

s. 10.1(4): Inspectors visit licensed premises to:

(d) investigate complaints;

(e) conduct training seminars; and

(f) respond to requests from licensees to discuss operational concerns.

s. 10.1(5): Licensees, particularly new operators, may wish to use inspectors' visits to ask any questions they might have about the Liquor Control Act, Liquor Administration Regulation and Board policy.

Appendix C

Occupiers' Liability Act
Chapter O - 3
1980

s. 1: In this Act,

(e): "visitor" means

(i) an entrant as of right,

(ii) a person who is lawfully present on premises by virtue of an express or implies term of a contract,

(iii) any other person whose presence on premises is lawful, or

(iv) a person whose presence on premises becomes unlawful after his entry on those premises and who is taking reasonable steps to leave those premises.

Liability of Occupier to Visitors

s. 5: An occupier of premises owes a duty to every visitor on his premises to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there or is permitted by law to be there.

s. 6: The common duty of care applies in relation to

(a) the condition of the premises,

(b) activities on the premises, and

(c) the conduct of third parties on the premises.

s. 7: An occupier is not under an obligation to discharge the common duty of care to a visitor in respect of risks willingly accepted by the visitor as his.

s. 8(1): The liability of an occupier under this Act may be extended, restricted, modified, or excluded by express agreement or express notice but no restriction, modification or exclusion of that liability is effective unless reasonable steps were taken to bring it to the attention of the visitor.

(2): This section does not apply with respect to a visitor who is an entrant as of right.

s. 9: A warning, without more, shall not be treated as absolving an occupier from discharging the common duty of care to his visitor unless in all the circumstances the warning is enough to enable the visitor to be reasonably safe.

s. 10: When an occupier of premises is bound by a contract to permit strangers to the contract to enter or use the premises, the liability of the occupier under this Act to a stranger to the contract may not be enlarged, restricted or excluded by that contract.

s. 11(1): An occupier is not liable under this Act when the damage is due to the negligence of an independent contractor engaged by the occupier if

(a) the occupier exercised reasonable care in the selection and supervision of the independent contractor, and

(b) it was reasonable in all the circumstances that the work that the independent contractor was engaged to do should have been undertaken.

(2): Subsection (1) does not operate to abrogate or restrict the liability of an occupier for the negligence of his independent contractor imposed by any other Act